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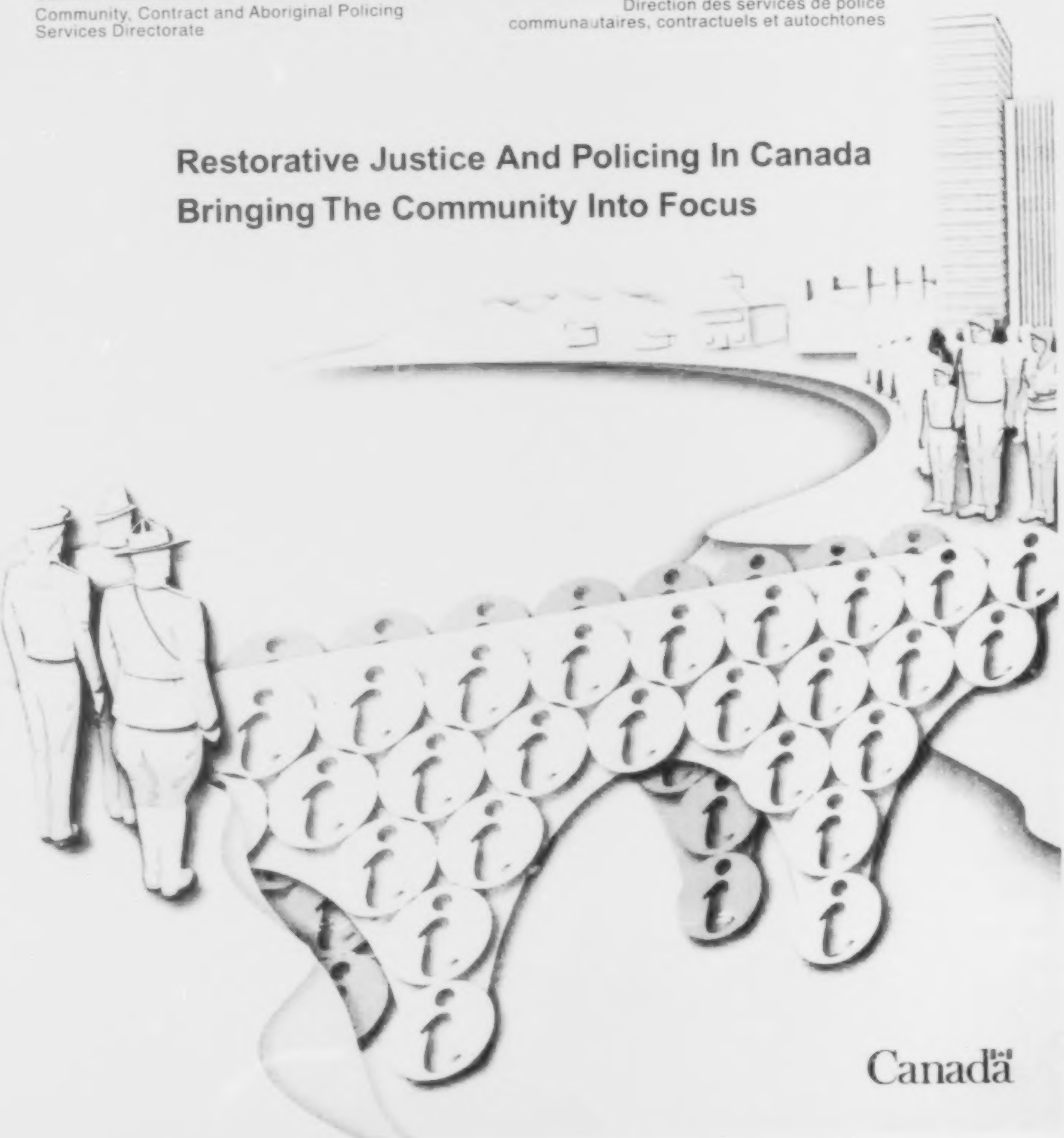
Restorative Justice And Policing In Canada

Bringing The Community Into Focus



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Restorative Justice And Policing In Canada
Bringing The Community Into Focus

by

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Executive Summary

Introduction

A widespread movement to develop alternative ways of delivering justice in society is taking place across a broad range of countries. Most commonly referred to as Restorative Justice, or Community Justice, the movement has recently become the subject of increasing interest from governments and sectors of the justice system, including the police.

Canada has been well represented in the development of restorative justice in terms of past practice and recent innovation. As part of the re-orientation of policing to community policing, the RCMP and the OPP as well as other police forces and components of the Canadian justice system have recently begun to embrace a much more active role in restorative justice. As key components of the justice system, the police have a central gate-keeping role through their exercise of discretionary decision-making. For many the current justice system is seen as failing to reduce crime and to attend to the needs of victims, offenders or the community, but while many claims have been made about the ability of restorative justice to address these issues, there has also been criticism about its limitations, and concern about the wholesale adoption of restorative practices particularly by the police.

The purpose of this report is to set these initiatives in the context of the development of restorative justice practices in Canada and elsewhere. It considers the historical development of restorative justice ideas, the underlying philosophy and goals of the movement and the characteristics of the main practices; the development of restorative practices in Canada and current initiatives; the benefits and limitations of restorative justice; and some of the wider issues concerning the role of the police in the use of restorative justice, particularly at the pre-charge stage.

Section I	outlines what restorative justice is in terms of principles, aims and underlying assumptions.
Section II	considers the historical development of restorative justice approaches internationally.
Section III	provides an overview of the development of restorative justice in Canada.
Section IV	considers the main benefits and limitations and development issues.
Section V	considers the challenges for the police and communities in Canada.

What is Restorative Justice?

Restorative justice can be seen as a set of principles which guide agencies and practitioners rather than a particular practice. It offers alternative ways of thinking about crime by emphasizing the harm crime does to the community, and how the community rather than the state can respond to crime in more satisfactory ways. It may incorporate a variety of approaches applied at various stages of the criminal justice process: pre-charge, pre-sentence, sentencing, and post release. A distinction is often made between the current system of retributive justice which sees crime as a violation of the state and emphasises guilt and the punishment of the offender, and restorative justice which places an emphasis on all those involved in an offence - victims, offenders and the community - and seeks to reconcile, restore and repair relationships and situations.

The guiding principles of restorative justice include: making room for the personal involvement of victims and offenders (and their families and communities) in crime events; seeing crime problems in their social context; using a forward-looking, problem-solving approach; and flexibility of practice. The objectives include: providing for the emotional, material and financial needs of victims and those affected by a crime; trying to prevent re-offending through reintegrating offenders into their community; enabling offenders to take active responsibility for their actions; developing the capacity of the community to deal with the effects of crime as well as its prevention; avoiding more costly legal responses to crime. Underlying assumptions are that crime derives in part from social conditions and relationships in communities, and that partnerships between community organizations, citizens and justice agencies are essential components for dealing with crime (Marshall, 1998).

Restorative justice is seen as a new paradigm or a different way of doing justice which brings victims and communities into justice decision-making in a more meaningful way, encourages greater offender responsibility, is more effective than punishment or treatment programmes, can help to consolidate or re-build communities, and is less costly. It should no longer be seen as an interesting addition to the range of formal sanctions, but as an alternative which will change the way justice is delivered. Practice based on restorative principles now encompasses many parts of North America, Europe and Australia and New Zealand. There are parallel developments in dispute resolution well beyond the justice system. Many proponents stress that restorative justice is not a set of techniques or programmes but a philosophical approach, but four major initiatives are usually associated with the movement: victim-offender reconciliation programmes; community, neighbourhood or youth justice panels; sentencing circles and family group or community accountability conferencing.

Origins and Development of Restorative Justice

Three developmental phases are usually identified: i) practices in early European and Western societies, and Aboriginal and other non-Western societies; ii) the revival of interest in restorative justice in the 1970's; iii) the recent focus on the community role in restorative justice in the 1990's.

i) Early dispute resolution in Western societies appears to have made extensive use of negotiated settlements and reparation - paying back for damage done - often on a private or community basis to restore the balance between victims, offenders and their community. Similar approaches are still found in some traditional and non-Western societies. From 11th - 19th century in most Western countries the state gradually took over responsibility for dispute resolution on behalf of victims and the community, prosecuting offenders and punishing them for breaches of state law, retribution replacing a negotiated settlement.

ii) The revival of interest in restorative justice is usually identified with concerns about victims' and citizens' exclusion from justice. Christie (1977) for example argued that conflicts are property, and urged the development of small neighbourhood courts reducing the exclusive reliance on professional justice personnel. The Mennonite community also urged the use of non-conflictual mediation and reparation for justice disputes, and was responsible for developing the first victim-offender mediation programmes or VORP (initially in Elmira, Ontario in 1974). The model spread rapidly, in various forms, through Canada and the USA, and to European countries from the mid 1970's. The VORP involves face-to-face meetings between victim and offender, facilitated by a trained mediator, to discuss the events and their effects and reach an agreed outcome. They are usually used post-charge or as alternative measures, and often with young offenders. Community and neighbourhood justice centres also began to appear from the 1970's in a number of countries, using mediation techniques to deal with civil and criminal cases.

High levels of satisfaction among victims and offenders with the outcome of VORP programmes have been common, but practice suggests that their use has been sporadic, referral limited, and often restricted to very minor cases or without a victim being present. Nevertheless, networks of mediation training and contact centres have been established in a number of countries, and considerable experience consolidated over the past 25 years.

iii) In 1990's a much more developed philosophy of restorative justice has emerged (eg, Zehr, 1990; Braithwaite, 1989) clearly associated with mounting dissatisfaction with the formal justice system, increasing retributive sentencing, fear of crime, overcrowded court schedules and institutions, and increasing costs. This community phase places much greater stress on the role of the community, on the wider circle of people involved in an offence, aims to work with more difficult cases, and advocates partnerships. Sentencing circles and family group conferencing are the primary examples associated with this phase. In a number of countries entire states and provinces plan to re-direct their correctional system towards a restorative justice model.

Family group conferencing originated in New Zealand in the mid 1980's, using traditional Maori dispute resolution techniques with young offenders. Family and friends of victims and offenders are brought together with a facilitator (a social worker) to discuss the event, its consequences and reach an agreement on restitution and the reintegration of the offender back into the community. Now legislated throughout New Zealand as part of an overall diversionary approach for young offenders, conferencing has been developed in a number of Australian states. A model which uses police referral and coordination of conferences at the pre-charge stage has been particularly well publicized, and forms the basis of much of the rapid expansion of conferencing techniques now taking place in North America and Europe.

It is argued that the offender, in discussing the emotional, physical, social and financial consequences of an event with those directly affected, experiences shaming, an apology almost always results, and the process of re-integration of the offender can then begin with the development of an agreed plan which will be over-seen by participants at the conference. The experience is seen as powerful and not a 'soft' option. Conferencing has been used at various stages of the justice process, is targeted at serious offences or those in which informal diversion and cautioning have not worked. Claims for successful completion and participant satisfaction are high (although less so for victims) and considerable cost savings have resulted from the diversion of young offenders away from the courts and institutions. Criticism of conferencing has focussed on the role of the police in police-led schemes, the lack of attention to victim needs, possible coercion of offenders and victims, gender and cultural appropriateness, and issues of due process and accountability.

The Canadian Experience: The Evolution of Restorative Justice in Canada

Canada has played a major role in restorative justice since the 1970's having been the site of the first VORP, and has developed extensive experience in mediation and reconciliation over the past 25 years. A number of VORPs were established, often by voluntary non-profit organizations, as alternative measures for young offenders, and subsequently for adults, as well as post-charge or as alternatives to prison. A network of community organizations undertaking the promotion of information and training has also been established. As in other countries, however, early experience found referrals to VORPs have often been limited and inappropriate, victim attendance low and with too little focus on victim needs, and there has been some evidence of 'net-widening'.

More recently legislative changes encouraging greater use of diversion for young offenders and adults, greater recognition of the need to consider alternative justice for Aboriginal peoples, the growth of victim concerns, and the movement towards community policing have all contributed towards a more receptive climate.

Sentencing circles have emerged as one of the main responses to the need for localized, community-responsive justice for Aboriginal peoples. They are seen as utilizing the traditional philosophy and principles found in Aboriginal communities which emphasise peacemaking, mediation and consensus-building, as well as respect for alternative views and equality of voices. Used in the Yukon since the 1980's they have become more widely used across Canada in Aboriginal communities in the 1990's, primarily in rural communities, but some urban circles have been completed. Sentencing circles include the judge, victim, offender, family or supporters, elders and other justice and community representatives. The circle makes sentencing recommendations to the judge who may accept or reject them. Local justice committees are often involved and community members responsible for ensuring sentences are carried out.

Criticism of circle sentencing includes the lack of formal guidelines, procedural safeguards and due process, inequalities in sentencing, the realities of traditional practice, the extent of community involvement and its relative strengths and ability to support sentencing decisions, the definition of a community, and power imbalances within communities and circle decision-making. In particular, there has been criticism of the use of circles in the case of intimate sexual and physical abuse, and the 'equality' or protection afforded the victims.

The development of community policing has been seen as representing a profound shift in methods of intervention and crime prevention. Brodeur (1994) outlines the five major characteristics of community policing as: an expanded police mandate, a pro-active approach, the establishment of partnerships with the community, decentralization, and 'softer' policing using persuasion and communication rather than force. Community policing has expanded considerably in Canada over the past 10 years, and both the RCMP and the OPP have adopted it as a service philosophy. In principle, it is compatible with much of the philosophy of restorative justice with its emphasis on communication, localized problem-solving, and community partnerships.

Spurred on by fiscal constraints, public concerns with crime levels, and dissatisfaction with the formal justice system, restorative justice has become the 'New Wave' in Canada. Renewed focus on youth justice committees and diversion for young offenders, and the legislation of adult diversion have all facilitated this movement, as has the enthusiasm generated by conferencing approaches. Voluntary, local organizations and police services are developing conferencing eg. in schools. A series of national and provincial conferences and initiatives have endorsed the overall philosophy. The federal and some provincial governments are developing strategies or exploring the scope for restorative approaches eg. the Department of Justice, Correctional Service Canada, National Parole Board, BC, Nova Scotia, and Ontario. A number of compendiums and accounts of projects have recently been produced which show the range and variety of projects established on restorative principles, and at all stages of the justice system, as well as guides to establishing restorative-based projects.

In Ontario the OPP is actively exploring the scope for developing community justice, encouraging individual projects and well as broader service commitment and training. The provincial government has explored the scope for formal and informal diversion over the past six years, and some project goals overlap with restorative justice. Community justice committees are currently being encouraged by the provincial government as well as conferencing at the pre-charge and subsequent stages. In Toronto an Aboriginal community council has demonstrated the scope for community-based sentencing decisions in an urban setting. A 1998 survey by the OPP indicates that a number of conferences, sentencing circles, justice committees and mediation programmes have been initiated since 1993 within OPP detachments, municipal and First Nations police services, apart from other community justice projects. Many of those projects clearly based on restorative principles are in First Nations policing areas.

The RCMP has endorsed restorative justice within its community policing philosophy since 1995, as part of a diversionary and community devolution strategy. Conferencing forms a major component in the form of Community Justice Forums. The first conferencing project was initiated in 1995 in Sparwood, BC. Systematic training in conferencing techniques (a three day session) was initially provided in 1997 by those responsible for establishing police-led conferencing in Australia. The RCMP is currently providing training for police and citizens in conferencing techniques across Canada, and in association with the Department of Justice, as well as initiating conferencing projects in a number of communities across the country. All RCMP divisions now have a trainer and a resource guide have been produced.

Restorative justice has become a much broader and more complex concept in Canada in the 1990's with an international presence, a wider range of approaches and a strong community focus, and one in which the police now sees themselves as playing a much more central role.

The Benefits and Limitations of Restorative Justice and Development Issues.

Restorative justice initiatives have demonstrated a range of benefits the formal justice system does not offer: for individual victims and offenders a more meaningful and satisfactory way of dealing with the impacts of an offence and generally high levels of satisfaction; for justice personnel, swifter justice, greater personal involvement and satisfaction, and considerable cost savings; for communities a more flexible approach and opportunities for greater involvement in justice decisions. The limitations include problems relating to individual rights, overemphasis on offenders and neglect of victims, overall goals, community and organizational commitment, and funding. Many are common to all forms of restorative justice.

Earlier practice and experience is a guide to the avoidance of many future problems, but eight major issues need to be considered in the development of restorative and community justice: net-widening; defining community; power imbalances; philosophy, goals and terminology; legislative impediments; justice issues; costs, benefits and funding, and evaluation.

Net-widening: a problem inherent in all, and a major criticism of many diversionary programmes or alternative sanctions. Minor offenders are drawn into the formal justice system and receive sanctions designed for more serious cases, or alternative sanctions are added-on to existing ones.

Defining the community: the term community is a vague one and has been used indiscriminately. Not all communities are clearly definable, or capable of sustaining or engaging in restorative justice projects, nor are those engaging in partnerships necessarily representative of all groups in a community. Engaging the community in restorative justice should not be seen as a 'quick fix' for crime prevention, some community problems cannot be dealt with without broader policy and longer-term input.

Power imbalances: those in positions of power in a community may not necessarily endorse restorative principles. Gender, cultural and minority concerns need to be included in developing restorative practice - eg. in individual circles or conferences - as well as broader planning or on-going partnerships. By virtue of their roles, justice professionals and others in positions of authority need to guard against abusing their power, particularly over young people.

Philosophy, goals and terminology: these are linked together and need to be clearly articulated to avoid the 'incorporation' of programmes and movement away from restorative principles, and to retain a balance between the interests of victims, offenders and community members. Incompatibility between the goals of partners, often imbedded in past training or working practices, requires particular attention.

Structural and legislative barriers: these may restrict the essential flexibility and vision of restorative approaches, or prevent their application to the more serious cases which stand to gain most from such approaches.

Justice issues: lack of due process, of clear definitions, vague procedures, and disparities in outcomes eg. in circle sentencing, conferencing and informal diversion, have all be criticised, although admitting involvement in an offence is an essential safeguard. Injustices may also result if the most isolated and marginal offenders are excluded from restorative approaches.

Costs and benefits: costs should not be allowed to drive initiatives and projects involving justice personnel cannot be sustained without specific additional funding, while community organizations need on-going not short-term funding. Calculating the costs and benefits of restorative justice initiatives will present 'formidable conceptual and practical problems' (Knapp, 1992). They should include hidden and direct costs and savings, and some of the benefits may be difficult to quantify, costs will vary with the location and size etc. of projects. Tackling more serious cases may be more cost-effective than less serious ones. Restorative justice projects, especially at the pre-charge stage, will have cost savings but support services must still be maintained.

Evaluation: the lack of evaluation of restorative justice projects has been a major complaint. Evaluation provides assessment of how far programme goals are being met, substantiation of claims for effectiveness, and accountability to communities and funders. Evaluation needs to be integral to the development of projects and involve those closely associated with them. It should examine the process and implementation of projects as well as outcomes, including case selection, participant involvement and satisfaction, agreements reached, community involvement, completion of agreements etc. Projects need to be well planned, monitoring set in place, and implementation assessed, since poor implementation may sink viable ideas. Assessment of impact may consider immediate and medium term outcomes, or longer term outcomes including re-offending, and comparative costs and benefits with the formal justice system. Data should be qualitative and quantitative. All evaluative processes require adequate staffing and funding.

Challenges for the Police and Communities in Canada.

For the police to take on a major role in restorative justice in their communities and re-think the delivery of justice, will require more than increasing the scope for diversion or providing brief training sessions in specific techniques. It will require a shifting of power from the police to communities. Most police services in Canada are experiencing considerable change in terms of orientation, reorganization and downsizing. Restorative justice presents a number of challenges linked with community policing with which it shares some core values: problem solving rather than blame fixing, shared responsibility with the community, concern with underlying problems and reintegration, the localization of initiatives and operations, and consensus building using mediation and communication rather than confrontation.

While there appears to be compatibility, the adoption of a community policing model is no guarantee that a restorative justice philosophy will be fully accepted or implemented without problems within a police service. There would also appear to be considerable variation across

Canadian police services in the extent of implementation of community policing. If restorative justice is to be developed in a substantive way it must have a significant impact on policing at all levels of policy and practice, and at management and local levels. Establishing formal protocols and procedures and training will not be sufficient, however. Police occupational culture which guides daily practice is often cited as a major factor inhibiting change. Primarily transmitted through stories and anecdotes, it is argued that giving police 'different stories to tell' (because of their closer involvement in justice decision-making) will facilitate a shift towards restorative justice (and community policing).

Training eg. in conferencing is still an important component, but it is essential that it takes account of the organizational context within which projects are to be developed. Stability of personnel is also crucial for the development of community partnerships and good programmes. The policing environment, its population, economic, social and crime characteristics, public attitudes towards crime and the police, and minority concerns will all require particular attention. They will influence the extent to which community partners are willing to enter into partnerships with the police.

Police involvement in conferencing, and the speed of its development has been the subject of concern in Canada and elsewhere. Apart from the difficulties of effecting change within policing, there has been criticism of police coordination and facilitation of conferencing, the extent to which victim and offender interests can be balanced, and attendance non-coercive, and the impact of mistrust of the police particularly among minorities. Independent facilitators, and shared decision-making in the selection of cases are recommended, as well as particular attention to cultural and gender factors and victim needs. Multi-agency and community partnerships appear to be the best way of avoiding many of the problems inherent in restorative justice and diversionary programmes but require considerable police attention to sharing power.

Thus while the police are well placed to develop restorative justice because of their discretionary role as gatekeepers to the justice system, the current push to expand diversion, and because they are well placed to develop community partnerships, it may be much harder for them to do so appropriately and effectively than others. More than any other agency or community group, the police face much stronger pulls and expectations, both internally and externally, towards a retributive offender-based justice system. There is, therefore, a much greater need for the police to develop broad-based community partnerships, to have strong support at all service levels, to establish clear principles, goals and protocols, and for careful planning, implementation and evaluation.

Restorative Justice And Policing In Canada: Bringing The Community Into Focus

> until we get something better than criminal justice, we need better criminal justice. The question at the outset of the new century is: could restorative justice prove to be `something better'?[1]

Introduction

The final years of the twentieth century seem a very appropriate time to consider the future patterns of justice and policing in Canada. What appears to be occurring - across a broad range of countries - is a widespread movement to consider alternative ways of working to provide justice in society. While it goes under many different names, this movement is most commonly referred to as Restorative Justice, or Community Justice. Canada, as has been the case with a number of other social movements, has been well represented in the emergence of restorative justice in terms of both its past contribution and more recent innovation. The movement has, however, become the subject of increasing interest among governments and sectors of the justice system who formerly paid little attention to its potential, leading to a snowballing expansion of policy and practice.

As key components of the criminal justice system, the police have always had an important role as `gatekeepers' in the exercise of their traditional discretionary role. As part of a wider movement to orientate policing towards the community, the RCMP and the OPP, as well as other police forces and components of the Canadian justice system at federal, provincial and local levels, have begun to take a much more active interest in promoting restorative justice practices. For many groups the current justice system is seen as failing to reduce crime, to attend to the needs of victims, offenders, or the community. Many claims have been made by its proponents about the ability of restorative justice to address these issues, just as criticisms of its limitations have been raised by others. Further issues are now being raised about the wholesale adoption of restorative practices, and the difficulties of grafting a movement which claims to offer a different kind of justice onto the existing formal justice system.

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[1]. Martin Wright Justice For Victims and Offenders: A Restorative Approach to Crime. (1991 p.9).

The purpose of this report is to set these initiatives in the context of the development of restorative justice practices in Canada and elsewhere. It considers the historical development of restorative justice ideas, the underlying philosophy and goals of the movement and the characteristics of the main practices; it outlines the particular development of restorative justice in Canada, and the extent of current initiatives; and it considers both the benefits and some of the problems inherent in such projects. But the report also raises some of the wider issues concerning the role of the police in this rapidly expanding field. Do the police have a major role in restorative justice, and less as gatekeepers than as peace keepers? How does it relate to wider changes in policing such as the development of community policing and the expansion of diversion? How does it relate to relationships between the police and minority groups within society? What are the benefits for Canadian society of their involvement, what are the dangers, and how might those dangers be resolved or minimized?

This report can only provide a brief account of the issues, many more detailed discussions are available, but some of the more important sources will be indicated. It focusses mainly on the use of restorative justice at the pre-charge stage, since it is at this stage that the police have the greatest scope for initiative.

Plan of the report

- Section I outlines what restorative justice is in terms of its principles, aims and underlying assumptions.
- Section II considers the historical development of restorative justice approaches internationally.

- Section III provides an overview of the development of restorative justice in Canada.
- Section IV considers the main benefits and limitations of restorative justice and development issues
- Section V considers the challenges for the police and communities in Canada

What is Restorative Justice?

Restorative justice as it has emerged in the 1990's is not a particular practice so much as a set of principles which guide the development of agencies and practitioners. It is seen as offering alternative ways of thinking about crime which emphasise the harm crime does to community relationships, and focuses attention on how the community, rather than the state, can begin to respond more satisfactorily to crime. It has developed its own underlying philosophy and may incorporate a variety of approaches. It can be applied at varying stages of the criminal justice process, pre-charge, pre-sentence, at the sentencing stage, and post sentence. One of the major contributors to the field had defined restorative justice as:

> a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future. (Marshall, 1996 p.37)

Another major contributor makes the distinction between retributive and restorative justice. While retributive justice sees crime as a violation of the state, and emphasises guilt and the punishment of offenders, restorative justice sees crime as:

> a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation and reassurance. (Zehr, 1990 p.181)

Many alternative terms have been used to describe this approach as a number of people have pointed out (eg. LaPrairie, 1998; Boutellier, 1996; Dignan & Cavadino, 1996; Groombridge, 1997) including the `new' justice, `community justice', `reparative justice', `transformative justice', `relational justice', `informal justice', `positive justice' and `communitarian justice'. (Some of the differences between these terms are dealt with in the Glossary). Restorative Justice appears to be the term with the longest history, and is accepted and understood internationally (Marshall, 1998). Primarily, however, all these approaches are about balancing the interests of the victims of crime with those of the offenders, and doing so in a way which involves the wider community, they are about `restoring' the victim, the offender, and the damage to the community.

Thus the guiding principles of restorative justice include:[2]

- making room for the personal involvement of victims and offenders (and their families and communities) in crime events
- seeing crime problems in their social context
- a forward-looking, problem-solving approach
- flexibility of practice

The objectives of restorative justice include:

- to provide for the emotional, material and financial needs of victims and those close to them who may also be affected by a crime;
- to try to prevent re-offending by reintegrating offenders into their community;
- to enable offenders to take active responsibility for their actions;
- to develop the capacity of a community to deal with the effects of crime as

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[2]. Many different `lists' can be found in the literature, this is a simple one based on the work of Tony Marshall (1996, 1998).

well as its prevention;

* to avoid a more costly escalation of legal responses to crime.

Restorative Justice is also based on a set of underlying assumptions about the generation of crime in society and how it can be prevented. These are that crime derives from social conditions and relationships in communities; that communities, as well as governments, have some responsibility for the prevention of crime. It also argues that the formal court system is unable to give full satisfaction to the needs of victims, that it demands only perfunctory responsibility from offenders, relies on punitive (retributive) sanctions which do little to restore the offender to his or her community or prevent further offending, and leaves the community uninvolved. Thus it argues that restorative justice is preferable, and likely to be more effective, than retributive justice and rehabilitation. In addition, there are assumptions about the need for crime to be addressed in partnerships which include justice agencies as well as community organizations and citizens.

There is a rapidly expanding literature on restorative justice, often written by proponents and practitioners who have been involved in the field for the past ten or twenty years. They have now been joined new practitioners, and by observers and critics who point to its theoretical bases, to its disadvantages and limitations, to the dangers of over-enthusiasm, and to the need for careful evaluation. A great many claims have been made that restorative justice represents a new paradigm of justice, that it can help restore victims to the justice process, that it enables offenders to take real responsibility for their actions, that it is more effective than punishment or treatment programmes, that it is less costly, that it can help reintegrate and rebuild communities, that it can tackle the causes of crime, that it is in fact a different way of doing justice.

There is also a rapidlv expanding range of people and projects claiming to be delivering restorative justice. As Marshall points out (1996) it has developed eclectically, primarily on the basis of practical experience, involving groups of people coming from very different philosophical positions, and approaches and applications are constantly being redefined. It now encompasses projects in North America, in many European counties, and in Australia and New Zealand as well as elsewhere.

What is clear is that restorative justice is no longer seen as a minor or interesting addition to the range of criminal justice sanctions, but as part of a much wider call to re-think the way in which justice is delivered. It has parallels with developments in fields well beyond the justice system itself: in industry, labour relations, schools, hospitals, social work, divorce and family disputes, and community conflicts.[3] Some commentators (eg. Weitekamp, 1993 and Marshall, 1992; Cohen, 1995) have suggested it relates to much broader societal changes in the way decisions are being taken and conflict resolved and which are affecting such areas as politics, economics, ecological issues and international affairs and the crimes of past state regimes.

Current models of Restorative Justice

Four major types of programme are usually identified with the restorative justice movement:[4]

- Victim offender reconciliation programmes or VORP
- Community, Neighbourhood or Youth Justice Panels
- Sentencing circles
- Family Group Conferencing or Community Accountability Conferencing

Victim offender reconciliation involves face-to-face meetings between victims and offenders in the presence of a trained mediator. Community or neighbourhood justice panels include a variety of initiatives, attached to or apart from the formal justice system. Sentencing and healing circles are used primarily in Aboriginal communities to provide alternative guides to sentencing decisions, and deal with the harm experienced by the community. Family group or community accountability conferencing, the most recent model of restorative justice, bring victims and offenders together with a wider circle of their family and the community affected by an offence, under the guidance of a trained facilitator. Some of the major differences between these models are dealt with later in the report.

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[3]. The Law Society for Upper Canada is to introduce mediation to deal with complaints by the public against Ontario lawyers, for example (Globe & Mail, 24.4.98).

[4]. Other models can also be identified, eg. Bazemore & Griffiths (1997) include reparative probation as an additional model in their paper outlining the main differences between approaches. Marshall (1996) notes that the evolution of restorative justice has resulted in a much greater diversity of programmes.

With the exception of sentencing circles, each of the approaches may be used at varying stages of the justice process: pre-charge, pre-sentence, as part of a sentence, or post release. They are also closely associated with diversionary practices such as informal warnings, cautioning and alternative sentencing provisions. As a number of writers have cautioned, however, restorative justice should not be seen as just a set of techniques or programmes, but as a philosophy and a political programme.

The Origins and Development of Restorative Justice

Most accounts of restorative justice try to give a sense of historical order to its development, but it is evident that many aspects have overlapped in both time and place.[5] There have often been simultaneous but independent developments, and some `old' ideas and practices have been overtaken by `new' terminology or incorporated in `new' philosophies. And there have always been elements of restorative principles and practice in most formal justice systems.

Discussions of the development of restorative justice usually point to three phases: early practices of dispute resolution, the twentieth century revival of interest in the 1970's, and the most recent renewal of interest in the late 1980's and 1990's (eg. Zehr, 1990; Marshall & Merry,

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[5] J.P Brodeur (1994) makes a similar point in relation to the development of community policing in North America.

1990; Van Ness, 1993: Weitekamp, 1993; LaPrairie, 1998). The first phase usually refers to its foundations in ancient practices in early non-state societies and pre-Norman England or Europe (Christie, 1977; Wright, 1991; Weitekamp, 1993) or in non-Western societies such as Maori or Aboriginal societies (eg. Maxwell & Morris, 1996; Ross, 1996). The second phase relates to the revival of interest in restorative justice and victims of crime from the 1970's in North America and Europe. The third and current phase is associated with the development of circle sentencing and `conferencing' in Canada, New Zealand and Australia, together with a much greater focus on the role of the community.

Early Restoration Practices

What most accounts of early Western societies suggest is that they often made little distinction between civil and criminal wrongs, and disputes between individuals were settled privately, or on a community basis. This often involved forms of reparation - of paying back in some form for damage done - to restore a balance in society between victims and offenders. While vengeance was also a possible response, it is suggested that this was much less commonly used than reparation (Zehr, 1990). Secondly, crime was not seen as an action against the state, but against the victim, their family and their community. As Martin Wright has pointed out:

> An action is only criminal because the ruler or government says it is and imposes sanctions on those who commit it. Even the most serious crimes have been dealt with by civil procedures in some societies, and perpetrators required to pay damages rather than undergo punishment. (Wright, 1991 p. 8).

Such justice is characterised as restoring the peace and balance in communities, through a negotiated settlement involving compensation and restitution, rather than punishment or vengeance (Zehr, 1990; Van Ness, 1993). Similar approaches to dealing with conflict in communities are ascribed to pre-colonial African societies, to current Japanese society, and to traditional Aboriginal societies (Van Ness, 1993; Maxwell & Morris, 1993; Stuart, 1995; Haley, 1996).

In most Western countries, however, and particularly those using common law, restorative principles ceased to play a major part in formal justice. The turning point is often seen as the 11th century Norman invasion of Britain, when the king began to use the law to establish control over feudal society, establishing the courts as acting on behalf of citizens. Offenders were now seen as having acted against the state rather than the victim: `the king became the paramount victim' and any reparation for damage done was retained by the king rather than the original victim (Van Ness, 1993 p.256). At various points up to the nineteenth century, justice systems seem to have made allowances for victims of crime to bring private prosecutions against offenders and claim financial restitution, but in practice the costs of such an exercise excluded most citizens (Wright, 1991: Weitekamp, 1993). Zehr (1990) suggests that the transition was in fact a gradual one. It culminated in the nineteenth century with the state consolidating its right to prosecute offenders for offences against the state, but also to inflict punishment for breaches of the law, rather than to negotiate a settlement between the victim and the offender. This state justice has been termed retributive because of its emphasis on establishing guilt, and apportioning punishment.

The Resurrection of Restitution and Reconcilliation

In the twentieth century up to the 1970's most discussion of restitution in criminal justice was limited to its minor role within the criminal law (Weitekamp, 1993). At this point a number of elements of restitution, often reflecting rather different philosophies, still existed or had been added to justice systems. These included financial compensation programmes such as the Criminal Injuries Compensation Scheme in England & Wales, and provincial schemes developed in Canada from the 1960's (Softley, 1978; Griffiths & Verdun-Jones, 1994); direct victim restitution payments which could be ordered by the courts and were used in Canada, the USA and other countries (Baril et al, 1984; Shapiro, 1990); and community service orders established in a number of countries in the 1970's including Canada, as a way of building in an element of restitution to the community (Pease, et al.1975; Menzies, 1986; McMahon, 1992).

Conflicts as Property

None of these elements individually amounted to, nor were they seen as restorative justice as it is now understood, however. Many observers place the revival of interest in, or the 'naming' of restorative justice, in the late 1970's, when concerns about the limited role of victims of crime in the justice system began to grow (Christie, 1977; Wright, 1991). The Norwegian criminologist Nils Christie was particularly influential. Reflecting back on pre-modern societies and their ways of negotiating conflict and disputes, he stressed the importance of giving justice back to the community and to the victim (1977). He argued that conflicts belong to the people who experience them in the first place - not to lawyers or professionals - that they are property. Thus he argued that victims should have a much greater role in dealing with their crime and their offender, that such involvement should take place in small neighbourhood courts (which would help to revitalize those neighbourhoods), and that we should reduce our reliance on professionals in the delivery of justice.

The development of practice, however, owed much to Mennonite communities in Europe and North America interested in finding alternatives to retributive justice (Zehr, 1990). A Mennonite Mediation Centre had been established in the United States in 1974 and the Dutch writer Herman Bianchi was particularly influential. It was through their activities that there emerged programmes which encouraged the use of mediation and brought together the two parties most closely associated with a crime, victims and offenders. This approach combined notions of reparation - of paying back and repairing damage, with a technique - mediation concerned to bring about reconciliation and understanding in a non-conflictual way. Marshall (1992 p.19) argues that 'reconciliation' was the new ingredient which modern criminal justice systems had not previously considered.

A range of other concerns also seemed to be met by restitution and reparative justice They reflected growing dissatisfaction with the existing criminal justice system. This was also the period when the effectiveness of rehabilitation programmes and their accompanying philosophy of sentencing was severely shaken (Martinson, 1974). The emerging victim-offender programmes seemed to promise an alternative to retributive and vengeful sentencing, a more humane and less isolating alternative to imprisonment, a way of diverting young offenders away from the courts without `letting them off', and a different approach to rehabilitating offenders (Weitekamp, 1993). Thus while the developing concern with victims and the victim's rights and victim support movements seem to have acted as a catalyst, the popularity of the emerging ideas lay also in their promise of meeting these wider and existing concerns.

Victim-Offender Reconciliation Programmes

The `prototype and impetus' for the development of victim-offender reconciliation programmes (VORP[6]) was the programme established in Elmira, Ontario in 1974 by the Mennonite Central Committee, although similar approaches had been used in some aboriginal communities in Canada (Peachey, 1989; Pate, 1990). Initially simplistic, it involved face-to-face encounters between two boys and their victims which led to apologies and the subsequent payment of restitution. The emerging programme, which was primarily used with young offenders, evolved into `the systematic application of structured mediation techniques' (Umbreit, 1994). Transported to the USA in 1978, the idea of victim-offender reconciliation programmes rapidly spread. By 1990 some 100 victim-offender mediation programmes existed in the USA growing to 123 in 1994 (Umbreit, 1990; 1994; Coates, 1990; Galaway & Hudson, 1990; Umbreit & Pate, 1993; Pate & Peachey, 1993).

How it works

The `classic' VORP model involves systematic face-to-face meetings between victims and offenders, facilitated by a trained mediator who is often a community volunteer (Zehr, 1990). The sessions involve discussion of the facts of an event, of the feelings generated by the event, and an agreement is reached on appropriate action to be taken by the offender. The mediator does not impose the agreement. In many countries most referrals are from the courts, ie. post charge. The assumed benefits include increased offender accountability; greater victim satisfaction; an increased community ability to resolve conflicts, and reduced reliance on incarceration. Zehr (1990 p.165) argues that VORP gives the victim a sense of empowerment in relation to the event, questions can be answered, some recovery of losses is possible and a sense of reassurance given.

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[6]. Sometimes referred to as victim offender mediation programmes.

Britain and other European countries quickly began to adopt the ideas and approach (Marshall & Merry, 1990; Marshall, 1992; Messmer & Otto, 1992). Although not always directly modelled on VORP, most programmes had elements of reparation and mediation. By 1992 there were 15 programmes in England and Wales, 1 in Scotland, 25 in Germany, 8 in Belgium, some 40 projects in France were using mediation approaches and 60 municipalities in Finland (Bonafe-Schmitt, 1992; Iivari, 1992).

There has been considerable variation between schemes, nevertheless. In most cases local adaptations and variations meant that referral sources, the stage of referral, procedures for handling cases and the use of volunteers or others as mediators differed from project to project. They often involved the development of inter-agency teams bringing together the police, social workers and other agencies working with young offenders in local communities, and might be used as part of diversionary and cautioning schemes associated with the police, by probation officers or social workers on referral from the courts, and as part of semi-independent community schemes (Marshall & Merry, 1990; Messmer & Otto, 1992).

Community and Neighbourhood Justice Centres

A second broad type of development which began in the 1970's was the community justice committee such as Neighbourhood Justice Centres and Community Mediation Boards in the USA (Messmer & Otto, 1992) or Community Justice Committees in the NWT (Pate & Peachey, 1993). There was a parallel expansion of the use of mediation in community neighbourhoods. In Norway community Mediation Boards called Konflikt-rad were established in 1980 and in 1991 made mandatory in every municipality (Falck, 1992). Some 42 Boards now exist staffed by 719 mediators, and take both civil and criminal cases, although most cases are referred by the police (Dullum, 1996; Christie, 1996). If a satisfactory agreement between victims and offenders is reached the police drop the case. Some Boards are now expanding their role to provide anger management and violence prevention programmes in schools. Thus many of these types of initiative are positioned in the community and deal with both criminal and civil conflicts.

Since the late 1970's therefore, there has been a widespread, although scattered implementation of victim offender mediation and reconciliation programmes in many Western societies, working mainly with young offenders, and adapted to local needs and interests. Most projects have been started at the ground level by interested practitioners, in some cases stimulated by government funding for pilot work. The growing movement has been accompanied by the development of a network of organizations set up to act as clearing houses and contact centres, to advise on good practice or to provide training in mediation techniques eg. The Network, Kitchener, Ontario; FIRM, now Mediation UK; the Centre for Restorative Justice/ Minnesota Restitution Centre in the US (established in 1972). Great emphasis has been placed on the importance of good mediation training - in terms of specific skills rather than hours of training - as well as careful prior preparation for the sessions with participants (Umbreit, 1994; Marshall, 1996).

Claims for the success of VORP have noted the high level of satisfaction among victims and offenders with the process, and the high level of agreements reached between the parties. There have, however, been considerable problems with the level of referrals, types of cases referred, and not least the neglect of victims' interests (Blagg, 1986; Reeves, 1989) as well as other issues (see Section IV below). By the mid 1980's, some observers noted that the initial enthusiasm and high expectations of governments and agencies had began to falter. The limited take-up of some projects, the lack of money to sustain projects, and an awareness of their limited impact upon a strong and apparently intractable justice system began to be evident (Davies, 1992; Pate & Peachey, 1993). One observer noted that interest in restorative projects among criminal justice personnel in Britain amounted to a `mild splutter' (Davies et al., 1988) and that reform initiatives can often appear `plodding, marginal and mundane' (Davies, 1992, p.200). In general, however, there has been a continuing attempt to overcome the problems identified in early programmes and to develop better practice. Immarigeon (1996) notes their successful use post-sentencing in a number of prison programmes. By 1997, Bazemore & Griffiths (1997) noted some 500 programmes in the USA and Canada.

The Emergence of the Community Model of Restorative Justice

The 1990's has seen the articulation of a much more developed philosophy of restorative justice which pulls together more strands, tries to overcome former limitations, and argues for a radical shift in the delivery of justice (Zehr, 1995; Van Ness, 1993; Braithwaite, 1989). This phase is much more clearly motivated by dissatisfaction with the formal justice system. It represents a reaction to the marked increase in punitive legislation and retributive sentencing, the high levels of fear of crime, and overcrowded court schedules and institutions. All of these features have been characteristic of many Western countries, including the USA, Britain and Canada, in the 1990's. It more clearly articulates the restorative justice model as a viable alternative and contrasts it with the retributive justice model seen to characterise the increasingly overburdened formal system.

The work of the American writer Howard Zehr has had a significant impact. In his book Changing Lenses (1990) he set out the two approaches as a dichotomy, as opposing models with different aims, the retributive model establishing the state's right to act on behalf of the individual, and to mete out punishment for wrongs against the state, the restorative model seeing criminal acts as injuries against individuals, and with the primary intent to restore the balance between the victim, offender and the wider community. (As has been suggested above this dichotomy should not be pushed too far since we cannot characterise all formal justice systems or all aspects of a system as retributive).

To this approach has been added the work of the Australian criminologist John Braithwaite (1989; Braithwaite & Mugford, 1994) who stresses the importance in most societies of `reintegrative shaming' as a way of expressing both disapproval of actions <u>and</u> re-acceptance back into the community. He suggests that the `judicial shaming' used by the formal justice system fails to offer reconciliation and is crime-enforcing and alienating.[7] His approach also reinforces the notion of the communal nature of crime, and of collective, or community agreements. Braithwaite's work has provided a strong theoretical basis for the family group conferencing model established in Australia as well as restorative justice more generally.

There is now, therefore, far more stress on the role of the community in restorative justice, rather than just the immediate focus on the offender and the victim. There is a much clearer advocacy of partnerships between groups within local communities. And a wider circle of community members are now seen as integral to reconciliation and mediation. The development of sentencing circles in Aboriginal communities in Canada and family group conferencing in New Zealand and Australia are the primary examples of these developments.[8] There is also a widening of the scope of restorative justice programmes from working primarily with juveniles or young offenders and minor cases, to the inclusion of adults and more serious cases. This trend is evident in both conferencing and circle sentencing, and the increasing willingness to tackle more serious cases reflects both a growing confidence on the part of proponents of restorative justice, as well as an assertion of the radical nature of the shift in the delivery of justice.

Bazemore and Griffiths (1997) argue that the common elements in the restorative justice models are what distinguish them from earlier attempts to involve communities in crime issues, because they now offer more clearly defined roles and ways in which the community and partners such as the police can become involved. Braithwaite & Mugford (1994) for example, contrast this greater definition of community roles in restorative justice with Neighbourhood Watch schemes which ask for a more general commitment on the part of the public to work with the police to prevent crime.

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[7]. His work derives in part from that of Garfinkel (1956) who saw criminal trials as `degredation ceremonies'.

[8]. Sentencing circles are discussed in the following section.

In some countries entire states or provinces have made plans to re-direct their correctional system towards a restorative justice model, eg. Vermont (Dooley, 1996) and Minnesota (Pranis, 1996; NIC, 1996) in the United States, and to some extent British Columbia (see also Bazemore & Griffiths, 1997; NIJ, 1996; Roberts, 1997). Many countries or states have established restorative justice approaches in at least part of their justice system. Like Norway, New York State now has a unified system of community dispute resolution centres throughout the state, and New Zealand and a number of Australian states have all legislated restorative justice approaches for dealing with young offenders (see below). An alliance of non-governmental organizations concerned with crime prevention and criminal justice aims to put restorative justice on the agenda for the tenth United Nations Crime Congress in the year 2000 (McCold, 1997). This increasing interest has led a number of writers to warn against the inclusion of programmes or approaches which have little restorative content under the new restorative justice banner (Bazemore & Griffiths, 1997), and there is considerable discussion of the capacity of communities and local institutions to take on these challenges (eg. LaPrairie, 1998).

Family Group Conferences - Reintegration Ceremonies

Family Group conferences originated in New Zealand in the mid 1980's, motivated, like other restorative justice approaches, by `grassroots' dissatisfaction with the formal justice system. There was particular concern about the over-representation of young Maori's in the justice system, and the system's inability to respond effectively to their needs. Traditional Maori concepts of dispute resolution were utilized, involving the notion of wider generational and family support for offenders and victims, of atonement and restitution, and the reintegration of the offender back into the community. The conferences were designed to be used with juveniles and young offenders.

The initial success of the approach led to its integration into the 1989 Children & Young Persons & Their Families Act, which stresses the importance of victims' interests, as well as encouraging the police to adopt `low key' responses to youth offending (Morris, Maxwell & Robertson, 1993). The Act sets out the scope for informal diversion for the most minor cases. All cases which are more serious and cannot be dealt with by warnings are considered for a Family Group Conference, and may or may not proceed to court (Morris et al 1993; Maxwell & Morris, 1996; Jackson, 1998). Conferences are also used at the sentencing stage, and a successful outcome may mitigate the sentence or stay proceedings.

This experience had a significant effect on juvenile justice in Australia, where family group conferencing has developed in different ways, and significantly, was initiated by a police officer Terry O'Connell who had been impressed by the New Zealand experiment. Here it is often referred to as `effective cautioning conferencing' or `community accountability conferencing'. The first pilot project was started at Wagga Wagga in New South Wales (NSW) in 1991 as part of a restructured police cautioning diversion programme (Moore & Forsyth, 1995 in Bargen, 1995). Conferencing was subsequently taken up by Victoria in 1992, by Western Australia and South Australia where it has since been included in new Young Offenders Acts in 1994, and by the Australian Capital Territory (ACT), where a controlled trial is currently underway in Canberra. The speed of the development of conferencing can be seen from the fact that in South Australia , whose model most closely compares with the New Zealand approach,1,592 family group conferences had been held by April 1995, following their enactment in February 1994 (Wundersitz & Hetzel, 1996).

How they work[9]: Conferences bring together the victim and members of their family or supporters, with the offender and their family or significant supporters, together with relevant welfare and justice representatives including the police. The meetings take place under the guidance of the coordinator or facilitator, and after careful preparation with all the parties. They may involve groups of between 5 and 30 people. As with VORP, conferences cannot proceed without the offender admitting their involvement in the offence. The coordinator uses a script laying down the order and style of questions and delivery, although flexibility to the cultural and social circumstances of the case is also seen as important.[10] The offender or another participant is asked to describe what took place; the psychological, social and economic consequences for the victim, the offender and others in the conference are elicited and discussed; emotional disapproval of the events - the shaming aspect - is communicated to the offender by the victim, by their supporters, and sometimes by their own family members. After this an apology is almost always forthcoming. Support for the offender and some degree of forgiveness or understanding is then elicited under the coordinator's guidance, and a communal agreement reached on the outcome - the reintegration aspect. This often includes both private and some community, or public, compensation plans. The conferences have a `ceremonial and ritual character' (Braithwaite & Mugford, 1994 p.141) which is seen as an essential aspect of the reintegration phase, and conclude with a signing of the agreement by all parties. There is follow-up of participants to ensure that agreements and undertakings are fulfilled, and those at the conference take responsibility for helping the offender fulfill their commitments. In the event of failure, conferences are repeated for subsequent offences.

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[9]. Braithwaite and Mugford (1994) provide a careful and detailed account of the process based on both New Zealand and Australian experience, as do Morris, Maxwell & Robertson (1993) and and LaPrairie (1995).

The New Zealand model places greater stress on traditional Maori concepts, notions of shame, of taking responsibility for actions and of healing, than Australian models.[11] They specifically target children with `poor family support and difficult backgrounds'. The Australian models have been more influenced by the development of notions of `reintegrative shaming' developed by the criminologist John Braithwaite (1989) and are used more often with non-Aboriginal youth. They are often used for events involving several offenders or victims. In some cases facilitators have been police officers (Wagga Wagga), in others probation officers, court administrators or magistrates (eg. South Australia); Youth Justice Workers (New Zealand) and independent facilitators (Victoria and NSW). In some cases conferencing is legislated (eg. New Zealand, South Australia, Western Australia).

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[10]. Training manuals also include seating plans.

[11]. Just over half of the offenders going through conferencing in New Zealand have been Maori (Maxwell & Morris, 1993, reported in Braithwaite & Mugford, 1994)).

Thus the models of conferencing used in New Zealand and within Australia have varied, reflecting the backgrounds of those initiating schemes, the willingness to experiment and adapt the approach to particular communities and circumstances, as well as to deal with initial problems and criticisms. They have developed on the basis of trial and error. Both are motivated by the failures of the formal justice system to provide a satisfactory response to juvenile offending, by the desire to divert young offenders from court or custody, and to involve victims, families and communities, and in the case of some jurisdictions, by the desire to avoid the costs of criminal trial and custody. Unlike victim-offender mediation, the conference model has specifically targeted the more serious cases of offending among young people, including serious assaults, arson, drugs, breaking and entry in private homes, and robbery[12] (LaPrairie, 1995). And there is - remarkably - a stress on trying 'again and again' when there is failure (Braithwaite and Mugford, 1994). Overall, conferencing is seen to bring about an 'alteration of perspectives and the generation of social support' among the community of people affected by an incident (Braithwaite & Mugford, 1994 p.145). There have been subsequent spin-offs including an experimental use of conferencing for adult drunk driving offenders in ACT Australia (Inkpen, 1997), and the use of conferencing to deal with school disputes or insurance company frauds as well as in the workplace (Braithwaite & Mugford, 1994).[13]

Claims for the success of conferencing suggest that 90% to 95% of conferences result in agreed plans of action; that there is high participant satisfaction among offenders, families and community members, police and youth workers; and that there are substantial cost savings. The New Zealand Department of Welfare, for example, has claimed a saving of $6 million by the avoidance of court proceedings, as well as the closure of institutions for young offenders

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[12]. In New Zealand all offences apart from murder and manslaughter can be dealt with by conferences (Morris, Maxwell & Robertson, 1993).

[13]. eg. Transformative Justice Australia, an organization set up by those responsible for the Wagga Wagga experiment, is actively engaged in training in the use of conferencing in the workplace as well as criminal justice settings.

(Braithwaite & Mugford, 1994) although it is clear that this results from the overall emphasis on diversion, and not just conferencing.

Critique: Inevitably, and partly on the basis of early evaluation, there has been criticism of the conferencing model in terms of both its claims to success, and the processes involved (eg. LaPrairie, 1995; Stubbs, 1995; Maxwell & Morris, 1996; Blagg, 1997). This has included the role of the police, the extent of victim involvement, gender and cultural appropriateness, and the fairness and coerciveness of the system. Early evaluation of the New Zealand experience found that victims had been involved in less than half the conferences, and victim satisfaction with the outcome was lower than that of other participants (Morris, Maxwell & Robertson, 1993; Maxwell & Morris, 1996). This evaluation also concluded that while 'net-widening' was not a significant problem, there was some coercion of young people and their families without full protection of their rights, and cultural differences were not fully respected, while the availability of community programmes for young people did not match the demand. Some changes have occurred in response to these findings and arguments. Following criticism of the Wagga Wagga model in NSW and its use of police as facilitators and coordinators, for example, cases in NSW are now referred to trained facilitators in community-based mediation centres known as Community Justice Centres. Some of these issues are considered further in Section IV and V below.

Thus like VORP, a practical practitioner-led development, the conferencing model has spread rapidly to other countries in Europe and North America, and has generated considerable excitement among governments and organizations including the police (Jackson, 1998; McCold, 1997). But it is the Wagga Wagga Australian model which seems to have taken most hold, partly because of the energies of the original instigators of that project who have travelled to a number of countries to publicise their approach (Marshall, 1997; Blagg, 1997). It has been adopted by the Thames Valley Police in England, for example, and has been the model most consciously adopted in Canada. It is, however, the least characteristic of the Australian models (O'Connor, 1998).

The Canadian Experience: The Evolution of Restorative Justice in Canada

As will be clear from the discussion so far, Canada has played a major role in the development of restorative justice, and continues to make an important contribution to emerging practice. These developments need to be seen, however, in relation to the broader social, structural and legislative changes influencing criminal justice in Canada which have taken place since the 1970's. These include changes in legislation relating to young offenders and adults such as the alternative measures provisions of the 1984 Young Offenders Act, and the more recent introduction of adult diversion into the Criminal Code in 1996. They also include greater recognition of the problems faced by Aboriginal peoples in relation to criminal justice, the growth of concerns about victims of crime and responses to violence against women, the movement towards community policing, as well as concerns to address fear of crime, increasing prison populations and court overloads, and costs.

Following the development of the first VORP in Ontario 1974 by the Mennonite Central Committee (Peachey, 1989), their use in Canada expanded considerably. An early assessment concluded that victim-offender programmes were primarily used as part of a diversion strategy for young people (Moyer, 1982). By 1993 there were 30 programmes in Canada operating in nine provinces and territories, half of them developed as alternative measures following the Young Offenders Act (YOA) (Pate & Peachey, 1993). The alternative measures provisions stressed the importance of community awareness of, and involvement in, youth justice issues, just as the Act itself placed much greater stress on young offenders taking responsibility for their actions (Bala, 1991).

> young persons "must, firstly, exercise responsibility towards society, secondly, towards the victims of crime, by making amends, where possible, and thirdly, towards themselves by actively participating in their own reformation and self-improvement" (Archambault, 1983 quoted in Pate & Peachey, 1993 p.108)

The Act also enabled provinces to establish citizen Youth Justice Committees to help with the administration of programmes or other issues (YOA 1984 Section 69). Such committees have not necessarily been based on restorative principles, however (Sharpe, 1998).

In a survey of victim-offender programmes for young offenders Pate and Peachey (1993) identified a range of aims and underlying philosophies - similar to those evident in other countries. Some programmes were directly influenced by the Elmira experiment with its stress on an alternative dispute-resolution approach. Some were motivated more by the diversion movement of the 1960's and 1970's which argued that children would grow out of crime and that avoidance of the stigmatizing effects of court proceedings was preferable. In Quebec, for example, diversion had been formally enacted prior to the YOA under the 1977 Young Persons Act (LeBlanc & Beaumont, 1992). An increasing interest in restitution and the need to hold offenders accountable for their actions was also apparent in some schemes, and others were clearly influenced by Nils Christie's notion of returning conflicts to the communities directly affected by an event (Christie, 1977).

Most programmes were operated by voluntary non-profit organizations such as native friendship centres or the John Howard Society, although a few were implemented by government departments. Pate and Peachey (1993) also noted wide variation between programmes in the mediation process, the extent of involvement of victims, the attendance of parents or the role of police, as well as provincial policies on eligibility.[14] Some schemes involved a community panel as well as offender, parents, and victim. It was usually a prerequisite that the alleged offender admit the offence and agree to take part in the mediation session. Criteria for inclusion tended to focus on the characteristics of the offence or the offender and targeted first offenders committing minor offences, often shoplifting. Most provinces specifically excluded violent and repeat offenders as ineligible for mediation. The most common outcome from programmes was an apology, and an agreement to undertake personal or community service.

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[14]. It is of interest, given the current focus on `conferencing', that some schemes preferred to exclude parents on the grounds that this would encourage the young offender to themselves take responsibility for their actions.

Pate & Peachey (1993) concluded that while both victims and offenders were very positive about the VORP experience, overall, there were some important problems. The police were often unwilling to refer cases suitable for mediation, such as those involving private burglary victims. The restriction of programmes to minor offences - usually shoplifting involving commercial stores - meant that often no 'true' victim was available. They also questioned how voluntary the option of mediation was for the offenders. In addition, many programmes did not follow up cases nor evaluate their practice in a way which would allow comparisons with other projects, and no information of the long-term effects on recidivism was available.

A major problem seemed to be the differing goals of programmes. Those which operated primarily to divert cases out of the system appeared to pay only lip-service to the goals of reconciliation between victim and offender. The interests of the offender (in terms of treatment and social work support) often seemed to overshadow victim interests. Finally, while there appeared to be conflicting evidence, it would seem that programmes operated under alternative measures provisions were vulnerable to 'net-widening' problems in drawing into the justice system young people who might otherwise have been dealt with informally (LeBlanc & Beaumont, 1992; Pate & Peachey, 1993).

Apart from their use with young offenders, VORP techniques have also been developed with adults in Canada, particularly at the sentencing stage as alternatives to prison. Some more recent evaluations have also been conducted including a review of four VORPs established between 1979 and 1986 in Langely BC, Calgary, Winnipeg and Ottawa (Umbreit, 1996).[15] Between 1992-93 some 4,500 cases, primarily adults, were referred to the four programmes, some 39% of them resulting in face-to-face sessions. Very high levels of satisfaction with the experience were found among both offenders and victims (90%) and 93% of all sessions resulted in an agreement, which three-quarters of the participants felt was a satisfactory one (75%). Comparisons with those who did not enter mediation showed that the latter were far less satisfied with the outcome of the case in terms of the 'justice' experienced. These results very were similar to the findings of VORP evaluations in the USA (Umbreit, 1994).

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[15]. Two of the programmes targeted adults and two young offenders, three operated at the pre-charge stage and one (Ottawa) pre-sentence (Umbreit, 1996). The Winnipeg programme is now the largest in Canada, employing 16 staff.

By 1988 restorative justice had received the support of the House of Commons Standing Committee on Justice and Solicitor General (Daubney Report) and was being widely recommended by a range of organizations including those actively involved (eg. Making Justice Real: Social Responsibility in Criminal Justice NAACJ, 1990). The scope for more extended use was also being explored. Gustafson & Smidstra (1989) for example, investigated respondents' views on the use of victim-offender reconciliation for serious crimes, and found very favourable responses, suggesting the possibilities for widening the range of cases where mediation and reconciliation could be used. Galaway similarly found favourable public attitudes to restorative justice in Manitoba and Saskatchewan (1994a & b). Victim-offender mediation has been successfully used in Winnipeg for serious offences by young offenders (Clairmont & Linden, 1998). And a project set up in Manitoba in 1993 specifically targets offenders at risk of a prison sentence of 10 months or more for diversion to a community programme with 'restorative principles' (Richardson & Galaway 1995; Bonta & Gray 1996).

Thus Canada has developed extensive experience of mediation and reconciliation programmes over the past 25 years, as well as developing a supportive network of information organizations and training centres. These include The Network, and the Mennonite Central Committee in Ontario: the Fraser Region Community Justice Initiatives Centre BC, and the Church Council of Justice and Corrections (CCJC), as well as organizations such as John Howard and Elizabeth Fry Societies, Rittenhouse and Springboard. Some of these groups see their role as working at the 'cutting edge' in developing new programmes and applications of restorative justice. It has been suggested that such long-term experience will be very important in the future development of other restorative justice initiatives such as conferencing approaches (Marshall, 1997).

Aboriginal Justice

A major area of concern, which has received increasing recognition over this period, has been the appropriateness of existing criminal justice programmes to aboriginal communities in Canada. Such concerns have formed part of the wider movement to develop alternative justice systems, programmes and policing for aboriginal communities in Canada and have become dominant issues in the 1990's (Task Force on Aboriginal Peoples in Federal Corrections, 1988; Hamilton & Sinclair, 1991; Linn, 1992; LaPrairie, 1992; Inuit Justice Task Force, 1993; Ross, 1992, 1996; Monture, 1996; Royal Commission on Aboriginal Peoples, 1996). The failure of the criminal justice system to reflect the needs, culture and traditions of Aboriginal communities, and the high rates of criminalization and incarceration of Aboriginal people requires a substantial shift in how justice is delivered. Many people see the traditional community basis of Aboriginal society and their holistic approach to problem-solving as essentially restorative (Ross, 1996; Clairmont & Linden, 1998).

A review of programmes with reparative content in police departments in aboriginal communities in the NWT, illustrated the importance of a focus on community. Griffiths & Paternaude (1990) argued that the attempt to impose community service and restitution orders on native communities in the NWT failed because they were part of an imposed external model which was not relevant to the needs of victims, offenders and the communities. Such programmes required young people to undertake community service work, provide financial or other restitution to victims, or with their parents to attend lectures by the police on the impacts of crime. They also served to further erode the 'traditional and customary approaches to conflict resolution and restoring order which have proven themselves to be far more effective than the Euro-Canadian approaches' (Griffiths & Paternaude, 1990 p.152). They argued instead for 'localized' corrections, in which community residents 'assumed primary responsibility for identifying and addressing the needs of offenders and victims' (p.152).

Sentencing Circles

'This is difficult, demanding, often frustrating work'. (Stuart, 1997 p.v).

> `Circle Sentencing is not a panacea, not a miraculous new religion, nor an extra-ordinary phenomena, but, in many cases, it is an essential alternative to the Court in producing viable sentencing plans that enhance community well being.' (Stuart, 1996, p.308).

Sentencing circles have emerged as one of the main responses to the need for localized, community-responsive justice for aboriginal peoples. They attempt to address some of the problems inherent in the itinerant court system with its non-aboriginal professionals and its basis in Euro-Canadian law (Crnkovich, 1993; Kueneman et al., 1992). The emphasis is on their ability to bring the community into the process of criminal justice. One of the major proponents is the Yukon judge Barry Stuart, who began using circle sentencing at the beginning of the 1990's (Stuart, 1997)[16]. Like conferencing, circle sentencing is seen as based on fundamental principles still inherent in aboriginal communities including concepts of peacemaking, mediation and consensus-building, yet combines both Aboriginal and Western approaches (Stuart, 1997 p 4). And like the more recent broader claims of restorative justice, it is viewed as a different process, not just a different form of justice.

Sentencing circles form part of a wider range of circles which are now being used to deal with community, family or workplace conflicts in aboriginal communities. Community circles include healing circles established to deal with the aftermath of traumatic events or issues such as widespread sexual abuse in a community (eg. Community Holistic Circle Healing, Hollow Water First Nation, LaJeunesse, 1993; Ross, 1996). They may involve entire communities in rural locations, or `personal communities' in large urban centres (Stuart, 1997) and while they have been used primarily in aboriginal communities, they are seen as appropriate and adaptable in non-aboriginal settings. Sentencing circles are used primarily at the pre-sentencing stage, but may be used post trial (Satisfying Justice, 1996[17]). Apart from the Yukon, they are now being utilized in communities across Canada including the NWT, Saskatchewan, Manitoba, Alberta, Northern Ontario, BC and Nunavik, Quebec. In Cumberland House Saskatchewan the RCMP refer some 6 cases a month to a pre-charge sentencing circle who make recommendations to the court (Satisfying Justice, 1996). Other well established examples include Kwanlin Dun, Yukon where sentencing circles may be held as often as every two weeks (Satisfying Justice, 1996). They are used in urban settings, eg. in Saskatoon, and for a range of offences including serious charges such as robbery and manslaughter, although they are not seen as appropriate for all offenders nor all crimes.

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[16]. Circle sentencing had been used in a number of communities in the Yukon in the 1980's but the first officially recognized use was the case of Billy Moses (R v. Moses 77 C.C.C.) in 1992.

[17]. Satisfying Justice published by the Church Council on Justice and Corrections (1996) provides a number of examples of current programmes based on restorative justice principles.

How they work:[18] There is no set format or `script', circle hearings are usually presided over by a Keeper who begins and concludes the circle with a prayer, and governs the passing of the feather or talking stick round the circle, recognizing those who wish to speak. Participants include those closely involved with an offender both family and friends, and victims and their family or supporters, as well as elders, the judge, crown and defence councils who present the facts of the case, the police, and other representatives of justice or community organizations. They are open to all members of the community. Recommendation to refer a case for circle sentencing may be made by a judge, or following a request by an offender and through the local Community Justice Committee. Acceptance into a sentencing circle is not dependent upon the seriousness of a case, but upon the sincerity of the offender, victim interest and support etc., (Stuart, 1996 p. 298). Their role is to hear and discuss the issues relating to the offence, the consequences for both offender and victims and their families, and to come to an agreement about a sentencing plan, under the guidance of the Keeper. The judge has the final responsibility in sentencing on the basis of these recommendations, and may accept or reject the recommendations. A review date may be set to consider how well the plan is being followed.

The local Community Justice Committee is seen as a crucial component in circle sentencing

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[18]. Detailed accounts of the process are given by Axon & Hann (1994), Stuart (1996), LaPrairie (1995) and Roberts & LaPrairie (1996). There are a number of different 'models' used reflecting differences in selection processes and participants included (Crnkovich, 1993).

(Stuart, 1996). Consisting of volunteers selected by the community, and supported by a paid coordinator responsible for much of the preparatory work required before a circle takes place, they may recommend a range of options including informal police diversion as well as mediation and restitution programmes before or after sentencing circles. Other types of community initiative include Elder Panels (LaPrairie, 1998) and Community Justice Councils such as the Teslin Tlingit Justice Council created in 1991 in the Yukon (Jackson & Griffiths, 1995; Satisfying Justice, 1996) where community members have the responsibility to decide on a sentence which considers both the offender's needs and those of the community, within the range set by the judge. Community members are also responsible for ensuring sentences are carried out.

Thus for Stuart (1997) the principles of circle sentencing involve working collectively towards a consensus; looking for common ground not differences; self-design which encourages commitment and ownership of the process; flexibility allowing for adaptation during the circle process; voluntary and direct participation; equality of opportunity and voices; and respect of other's values and views. He stresses that the challenges involved in developing such a different approach include dealing with the resistence within individual communities, institutions or governments, as well as motivating participants over time. In his view there is `no universal blueprint' and circles are not a `miracle cure'. They involve shifting the balance back to the family and the community and away from the formal justice system, which should remain only a back-up and final resort in conflict resolution.

Critique: While recognizing the need to develop alternative approaches to justice among Aboriginal communities, not all observers are as enthusiastic about circle sentencing as its main proponents (eg. Crnkovich, 1995; LaPrairie, 1995 & 1998; Roberts & LaPrairie, 1996). A number of criticisms have been raised about the lack of formal guidelines, procedural safeguards and due process; the potential for inequalities of sentencing; how far circles reflect traditional aboriginal practices; the extent to which the community is involved and how that community itself is defined; the potential for power imbalances; and the strength of community infrastructures to support decisions (LaPrairie, 1995).[19] On the basis of their use in the Inuit community of Nunavit, Crnkovich (1993, 1995) questions the underlying assumptions that such practices are 'rooted' in Inuit tradition. She suggests that those involved in the process were not representative of all groups in the community and the position of the victims was far from being open, safe or equal. She also questions whether sentencing circles really constitute an alternative or new form of justice and not just an 'add-on'.[20]

There has also been increasing concern about the lack of evaluation of circle sentences, to demonstrate how far they meet their objectives including the reduction of crime in communities and re-offending or even costs (Roberts & LaPrairie, 1996; Bazemore and Griffiths, 1997; Clairmont & Linden, 1998). LaPrairie (1995) suggests that the ultimate test is to prove how far circle sentencing changes communities, and how far it assists victims: 'Ironically, this is also the group whose needs have most influenced the restorative justice movement' yet the few evaluations completed suggest that victims remain the least satisfied with the process, while offenders, justice personnel and community leaders are 'usually supportive' (p.88). She reports evaluations in Ontario Aboriginal communities by Clairmont (1993, 1994) and Obonsowin-Irwin (1992, 1992a) which suggested victims were rarely involved or felt dissatisfied with outcomes. Griffiths & Hamilton (1996) also report concerns among Aboriginal women about the extent to which local communities with high levels of sexual and physical abuse can provide adequate justice or protection for victims.

For many, circle sentencing is a developing area where lessons must be learnt from past experience (Bazemore & Griffiths, 1997; Clairmont & Linden, 1998). The Hollow Water

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[19]. For example, the sentence of three years banishment imposed by a Saskatchewan sentencing circle on Billy Taylor for the sexual assault of his ex-wife, and upheld by the Court of Appeal, has been the subject of considerable debate because of the seriousness of the offence, and the implied leniency of the sanction. See also the criticism of the use of a healing circle in place of a court trial for Bishop Hubert O'Connor and his rape victim in BC (Globe & Mail 19.6.98).

[20]. Her critique was based on observation of sentencing circles involving cases of violence against women.

Healing Circle is seen by some to have had considerable success in dealing with the widespread and generational problem of sexual abuse in the community through restoration and healing, rather than the retributive formal justice process (Ross, 1996; Clairmont & Linden, 1998).[21] And Stuart (1997) among others stresses the importance of evaluating the less tangible effects of circle sentencing on the community, of not allowing the failure of an immediate circle outcome to be seen as a failure of the process as a whole, and of recognizing the fallibility of the formal system itself.

Overall, therefore, sentencing circles are seen as having broader aims than conferencing (LaPrairie, 1995) with community healing and restoration as a major objective. Conferencing - at least in its Australian form - focuses on the rather narrower goal of `closure' among the `community of people affected by the incident'. Sentencing circles also have a greater focus on the offender within the community, but rather less emphasis on victim's needs compared with victim-offender mediation programmes. Both sentencing circles and conferencing have been able to work with more serious offences than mediation schemes.

Positioning the Police: The Emergence of Community Policing and its Links with Restorative Justice

The development of community policing in North America as well as elsewhere has been seen as representing a <u>profound shift</u> in methods of intervention and crime prevention away from the use of force (Brodeur, 1994). This shift has become particularly evident in the past decade as increasing numbers of police forces have begun to experiment. While the term has been used to cover a variety of approaches, not all of which are fully representative, Brodeur outlines what he sees as the five major characteristics of community policing. These are an expanded police mandate; a pro-active approach; the establishment of partnerships within the community; decentralization; and `softer policing' ie. using techniques of persuasion and communication rather than force. The development of community policing in Canada, has expanded considerably from early initiatives in Edmonton, Halifax, Victoria (Griffiths & Verdun-Jones, 1994) to include the Montreal Urban Community Police Force, and areas of BC. The RCMP adopted community policing as its service delivery model in 1989, and the OPP is in the process of developing its own community policing philosophy (Community Policing: Shaping the Future, 1996; OPP 'How do we do it?' Manual of Community Policing, 1997; Wiseman 1997).

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[21]. Some 100 victims and offenders and 200 other members of the community had been involved in the programme by 1995, and only two offenders had re-offended (Ross, 1996). But others have pointed to the low levels of victim satisfaction compared with offenders, and suggest that levels of community support for the outcomes are lower than expected (LaPrairie, 1998).

The compatibility between the models of community policing, aboriginal justice systems, and restorative justice can be seen in their stress on decentralization - on the localization of problem-solving; on the use of techniques which stress communication and persuasion rather than force and punishment; and on the establishment of partnerships within the community. Brodeur (1994) refers to a full community policing model as `relational' because it is concerned with how it relates to the individuals, groups and organizations in its community - rather than how it enforces the law.[22] It aims to reactivate informal controls, increase communication, and requires stability in terms of police personnel. Moore (1992) argues on the basis of changes in policing in New South Wales that it means playing a peace keeping and coordination role in the social justice system, rather than a law enforcement and gate-keeping role for the criminal justice system:

> those police who have taken seriously the language and philosophy of community policing are now defending the role of police as coordinators of the social justice system. (Moore, 1992 p. 51)

Current Developments

It is clear that restorative justice has now become the 'New Wave' in Canada, as Bazemore and

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[22]. What he refers to as 'interventional' policing.

Griffiths put it (1997). The range of Canadian projects which are seen as representing the restorative justice philosophy can be seen in the CCJC compendium of initiatives Satisfying Justice (1996) and projects are developing at increasing speed. In an extensive critique, Ruth Morris (1994) has argued that the Ontario justice system is 'expensive, unjust, immoral and a failure' and proposes a series of Transformative Justice Courts which would consider not only the harm done and the injuries needing reparation, but also the roots of crime.

All stages of the justice process are now included. The combination of fiscal constraints, court overloads, and public concerns about crime levels and safety have contributed to the changes already underway. Both Quebec and New Brunswick have responded to some of these constraints by closing prisons and increasing the use of conditional sentences and community programmes. Other provinces are also developing programmes which will increase the scope for community involvement in criminal justice, some of which have a restorative component.

Thus the re-alignment of policing towards the community, and the search for viable alternatives to the existing justice responses for Aboriginal communities, as well as women and minority groups, have all combined to provide a favourable climate for experimentation. Dissatisfaction with current court processes, the length of time taken to deal with cases, the costs of formal proceedings, the frustration for justice personnel including the police and witnesses caused by delays, and frustration with the outcome of many cases, are now recurring themes in discussions about the need to change (eg. Goundry, 1997).

Much current Canadian activity follows from the re-assertion of the principle of diverting minor cases away from the formal justice system or post charge, to enable the courts to focus on the more serious cases. This includes the1996 legislative changes to the Criminal Code encouraging adult diversion (Bill C41 Section 717)[23]. The Federal government has also renewed its encouragement of the involvement of youth justice committees in community projects, including restorative justice initiatives, and a number of provinces are contemplating the extension of informal as well as formal diversion or cautioning strategies. Correctional Service Canada established a Restorative Justice Unit in April 1996 to explore the scope for, and support, initiatives within the correctional system. Together with the National Parole Board they initiated Community Releasing Circles in Saskatchewan in 1997. Circles are being used at the Healing Lodge for federally sentenced women. There has also been a corresponding increase in the use of restorative approaches for civil law cases (eg. mandatory mediation has been introduced for certain civil and family law cases in Ontario and Quebec (British Columbia, 1997).

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[23]. This Bill also introduced conditional sentences into the Criminal Code.

Family group conferencing has now been added to the continuing and evolving victim-offender mediation projects, sentencing circles, community justice committees, and alternative measures programmes. Only two years ago a review suggested that conferencing was `not yet much used in Canada or the United States' (Immarigeon, 1996 p.178). At that time BC was the only province considering legislative enactment, otherwise projects were `fitted into' current legislative and administrative structures. Isolated projects identified at that point included the use of family group decision-making in Newfoundland for family violence and child protection cases (Pennell & Burford 1996) and a family group conferencing pilot project in Winnipeg for young Aboriginal offenders (Longclaws, Galaway & Barkwell 1996) and the Micmac Diversion Council on Lennox Island, PEI. That situation has rapidly changed as Umbreit and Zehr have pointed out:

> Rarely has a new criminal justice idea received such quick exposure and interest from audiences as widespread as activists, professionals and the general public. (1996 p.24)

Since that time a series of Canadian symposiums, conferences and training sessions have helped to propel restorative justice forward and attracted public attention.[24] These have included a symposium Achieving Satisfying Justice held in Vancouver in March 1997 by the Church Council on Justice and Corrections (CCJC). This in turn led to the compilation of a follow-up survey of Events and Initiatives Related to Restorative Justice, to discussions at the Canadian

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[24]. See for example Young and Ashamed (Schuler, 1997).

Criminal Justice Association Congress, and a symposium in Nova Scotia all in September 1997; and The Greater Toronto Restorative Justice Symposium November 1997. Follow-up sessions have also taken place in BC, Alberta , Quebec and Newfoundland. All of these have brought together people from community organizations, local, provincial and federal governments, and justice personnel, including the police. Training programmes are now beginning to multiply in the use of conferencing in particular, and to spread to fields outside the justice system (see eg. Interaction Fall 1997).[25] Government committees have recommended family group conferencing along with increased use of police cautioning and circle sentencing particularly for young offenders (eg. National Crime Prevention Council,1995; Standing Committee on Justice and Legal Affairs, 1997). Many of their recommendations are developed in the Department of Justice's discussion paper Youth Justice Renewal (May 1998) which specifically encourages community-based preventive and alternative responses to youth crime. It also stresses the very high use of youth court and custody in Canada compared with a number of other countries including the United States.[26]

Some of the more recent developments in restorative justice in Canada are summarized below.

Alberta: Apart from the use of sentencing circles and victim-offender mediation, there is interest in conferencing in the province. Sgt Randy Wickins of the Edmonton Police Service has been developing conferencing at Sherwood Park since 1996, and coordinated some twelve sessions over a period of eighteen months. Most have been facilitated by a trained community mediator. What is significant about the Edmonton approach is the focus on developing community partnerships and protocols, to 'lay the groundwork' for conferencing with the aim of establishing a community justice council to which cases can be referred and appointing a community coordinator (Wickins, 1998). The Edmonton Victim-Offender Mediation Society has also sponsored a very useful and comprehensive guide to restorative justice for community organizations (Sharpe, 1998). Calgary Police Service has also begun the use of conferencing following an RCMP training session in 1998, as part of its police-school liaison work (Youth Education and Intervention Unit). Sessions are coordinated by the police, but facilitated by school staff.

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[25]. The American organization Real Justice ran three family group training conferences in Halifax, Ottawa and Toronto in March-April 1998, and plans some 200 across the US.

[26]. Eg. about 25% of young people coming to police attention in Canada are diverted from court, compared with 52% in the US, 57% in England and Wales, and 61% in New Zealand (Dept of Justice, 1998).

Manitoba: The Hollow Water Healing Circle has provided an important basis for the development of circles. Winnipeg has been the site of one of the largest mediation programmes in Canada established in 1983, with a staff of 16, and a new mediation services targeting different groups are being developed. The Aboriginal Legal Services Organization is developing conferencing and mediation projects. Youth Justice Committees and conferencing are also being established in Portage La Prairie (Events and Initiatives, 1997).

Saskatchewan: Apart from increasing the use of sentencing and healing circles, the province introduced its Restorative Justice Strategy in 1995. This responded to the 1996 amendments to the Criminal Code and recommends the use of a range of diversionary strategies and programmes for adults, as well as for young offenders diverted under alternative measures provisions, and including family group conferencing (Saskatchewan Justice, 1997). The Department of Justice is providing on-going support and training in conferencing and mediation. Examples include the Atoskata project in Regina where a victim compensation programme is used as an alternative to prison for young Aboriginal offenders, and Kweskohte in Regina uses family group conferencing for Aboriginal youths committing more serious offences including assaults, breaking and entry, and theft over $5000 (Satisfying Justice, 1996). A number of Youth Justice Committees have also been established in recent years. In LaRonge, the RCMP is collaborating with the Indian Band and other partners in a Restorative Justice Committee, planning a series of programmes including victim offender mediation (Events & Initiatives, 1997).

Quebec: The province stands out for its extensive use of police diversion and alternative measures for young offenders (almost 50% of youth cases are referred) and has an extensive range of programmes emphasising community involvement and accountability (Standing Committee on Justice and Legal Affairs, 1997). For example, Pro-Services, in Quebec City uses conflict resolution techniques bringing together young offenders, victims, their families and other community members affected by a crime, and is developing neighbourhood councils which will be able to take cases diverted from the formal system (Satisfying Justice, 1996). A number of victim-offender mediation programmes are run by community organizations. A restorative justice philosophy also forms the basis of such initiatives as Waseskun House in Montreal, a native community residential centre which uses a holistic philosophy of healing and restoration (Clairmont & Linden, 1998).

Nova Scotia: Since August 1997 the province has developed a four-fold strategy for the development of restorative justice at four points in the justice process: pre-charge, post charge, post-sentencing and post-release (Fowler, 1998). This will be developed in two phases. Phase One involves the implementation of projects including conferencing with young offenders in the Halifax region and Cape Breton. Existing community organizations with on-going experience of victim-offender mediation under alternative measures provisions will receive additional provincial funding to develop programmes. Some 150 community members and educators have so far received training in conferencing across the province from the RCMP.

Newfoundland & Labrador: The use of sentencing circles and elder panels is increasing, and a new victim offender mediation programme initiated in 1997 (Events & Initiatives, 1997).

BC: In April 1997 and January 1998 the Ministry of Attorney General announced a series of justice reforms which include the incorporation of restorative justice to be woven into the existing criminal and civil systems (Strategic Reforms of British Columbia's Justice System, BC 1997; A Restorative Justice Framework, BC 1998). A Community Accountability Programming department has been established and an information package and seed money of $5,000 made available to communities and organizations wanting to set up restorative justice initiatives (February 1998). Some 23 current projects are noted across the province, including victim-offender mediation, family group conferencing, sentencing circles and neighbourhood accountability boards. (A panel of three trained members who meet with an offender and their family and sometimes the victim, to decide on appropriate sanctions. A panel member acts as a mentor to ensure the offender completes the agreed plan). BC's approach aims to incorporate restorative justice into the existing justice system to increase public satisfaction, without compromising public safety (A Restorative Justice Framework, BC 1998). Nevertheless, there are clear restrictions on the kinds of cases which can be dealt with through community initiatives which preclude the incorporation of more serious or repeat offences (see Goundry, 1997). It may not meet Zehr's (1990) notion of a paradigm shift.

Yukon: Apart from sentencing circles run by Kwanlin Dun and Teslin Tlingit Councils, conferencing is being developed as part of adult and young offender diversion programmes eg. for Laird First Nations, and a number of community justice committees use mediation as part of pre and post-charge diversion projects for adults and young offenders (Events and Initiatives, 1997)

Ontario: Over the past six years the Ontario Ministries of the Attorney General and Solicitor General & Correctional Services have explored ways of reducing court overloads and fiscal constraints. Under the Justice Review Project (1992) four adult diversion programmes have been piloted in the province (Moyer & Associates, 1996). As formal and informal diversion projects they were intended to meet a number of goals for the justice system, the offender, and the community, including diverting the least serious cases, reducing pressure on the courts and costs, as well as contributing to greater victim or community satisfaction, offender accountability etc. Some of these goals overlap those of restorative justice. The Ottawa pilot project involved pre-charge diversion, those in Thunder Bay, Windsor and Kingston post-charge diversion. They targeted first offenders committing primarily Class One offences, and specifically excluded most violent offences. The great majority of cases diverted in all four pilots involved shoplifting

(Moyer & Associates, 1996).

Following the 1996 Criminal Code amendments, the province continues to explore the scope for both formal and informal diversion which would be governed by guidelines and standards (eg. re-casting pre-charge diversion as community justice sanctions in keeping with its overall approach to crime (Blueprint For Justice, 1994)). Many diversion projects already exist in the province. A random survey of police services in 1996 located 26 pre- and post-charge projects outside Metropolitan Toronto (OPP, 1996). In Toronto, for example, the Aboriginal Community Council Toronto hears cases involving aboriginal offenders diverted from court, many of whom have previously received prison sentences. The council is composed of volunteers from the Aboriginal community who make decisions about the sanctions to be imposed. A recent evaluation suggests there is considerable potential for working with Aboriginals in urban settings (Moyer & Axon, 1993; Satisfying Justice, 1996).

In 1997 the Ministry of the Solicitor General and Community Services reported it was developing restorative justice initiatives for adults and young offenders, including conferencing and community justice committees, as well as policy, procedures and training (Events & Initiatives, 1997). Apart from those in Aboriginal communities, the first sentencing circle in the Ottawa Court took place in 1997. Conferencing has also begun in the province eg. the Waterloo Regional Police began a school-based project in April 1998 which will deal with incidents occurring in school which are referred by the school authorities or the police to a community conference (Clelland, 1998). It is also being developed for Treaty 9 First Nations and Red Lake and Ear Falls. In Sudbury, a coalition of organizations is exploring the needs of the community and plans to initiate programmes for native and non-native offenders in 1998.

A postal survey of community justice initiatives in Ontario OPP detachments, municipal and First Nations police services was conducted in March-April 1998. The survey asked for information on pre or post-charge community programmes with victim, offender and community components. The results give some idea of recent developments although a number of known programmes were not included in the responses. Of the 200 agencies surveyed 69% responded, and a number of recent projects were located, although 78% of the agencies reported no relevant programmes. The majority of the 56 programmes reported involved diversion and alternative measures programmes, particularly for young offenders, but it was not always clear whether or not they involved any explicit restorative component (eg. the possibility of victim-offender mediation). Many of the programmes had been initiated from1993 onwards. Six conferencing and circle sentencing programmes had been initiated since1996, eight Elder or native justice tribunals or committees established, and three victim-offender mediation programmes, all since 1995. Overall, the most common goals of programmes were offender responsibility, followed by the reduction of caseloads. Victim satisfaction, offender rehabilitation and community involvement were less frequently mentioned. The range of organizations or partnerships running programmes was considerable, including the police, probation and parole and community service offices, Crown counsel, Family courts, schools, justice committees, Band Councils and community organizations. While information was incomplete, few programmes provided accounts of the numbers of cases or other details, suggesting that monitoring or record keeping was infrequent. (See Appendix I for a fuller account of the survey).

RCMP: Since 1995 the Commissioner's Directional Statements have underlined the commitment of the organization to develop community justice initiatives which involve both diversion and community devolution, and to adopt restorative justice as a philosophy within community policing (CDS's 1995 - 1998; Cooper, 1996 in Pony Express). Conferencing forms a major component of this initiative. The preferred term adopted by the RCMP is community justice forums (Murray, 1997):

> A community justice forum (CJF) is a safe, controlled setting in which an offender, victim and their respective families and supporters are brought together with a trained accredited facilitator to discuss the offence, its effects and to jointly decide how to right the wrong that has been done. (Community Justice Forums: A Canadian Resource Guide,1997).

These are not advocated as the only model of restorative justice, since sentencing circles and victim-offender mediation programmes are also supported, but as the venue with the most potential for police input.

Formal training in conferencing began in January 1997 when 57 people including RCMP officers and community volunteers undertook a three-day course as potential facilitators of Community Justice Forums. Subsequent training sessions have been held in Surrey BC, Edmonton, Regina and Ottawa. The initial training sessions were conducted by Transformative Justice Australia creating a direct link with the Australian Wagga Wagga approach to conferencing. Individuals who have been trained in conferencing techniques are now available in all RCMP divisions to train employees or community members interested in setting up CJF's (Pony Express October 1997). They have been responsible for the training of local police, school staff and community volunteers at three-day sessions on conferencing in a number of provinces since 1997 (such as 150 people in Nova Scotia). Cadet training at the RCMP Training Academy in Regina now incorporates work on community justice forums. The RCMP are also collaborating with the Department of Justice on a five-year training programme under the Aboriginal Justice Initiative,[27] and with the Canadian Police College in developing a multi-dimensional package on community justice forums accessible to all police services (Community Justice Forums: A Canadian Resource Guide, 1997).

One of the first uses of conferencing in the force was initiated by an RCMP detachment commander and a defence lawyer in 1995, with the Sparwood Youth Assistance Programme BC (Bouwman, 1997). Over the past three years referrals to Youth Court which used to amount to 60-70 a year have virtually ceased. In the past 18 months there have been no referrals, and cases have been dealt with through the Community Justice Forum (Ross, 1998). Some 19 other RCMP policed communities in BC have now established forums (eg. Williams Lake). Coral Harbour Detachment NWT are setting up community justice forums, Sparwood BC is now planning an adult diversion programme, and some 30 other programmes have been started in small communities from PEI to Vancouver Island (Pony Express, 1997).

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[27]. The RCMP is contributing $750,000 to the initiative, of which they will retain $200,000 to train participants.

It is clear, therefore, that restorative justice in Canada has become a much broader and more complex concept in the 1990's, with the growth of approaches and projects and the current enthusiasm to embrace its philosophy. As Bazemore & Griffiths (1997 p.28) suggest the term 'community justice' is now being used in both Canada and the USA 'as a broader umbrella concept which also encompasses community policing, neighbourhood courts and justice centres, community development and 'community-building' interventions, 'beat probation', and a variety of delinquency prevention programmes.' Overall, there is a willingness to shift at least part of the burden of justice towards the community, and away from the exclusive control of justice professionals including the police, lawyers and judges (Clairmont & Linden, 1998). This is particularly clear in relation to strategies for young offenders. And Canadians continue to play a major role in the restorative justice movement internationally as Clairmont and Linden (1998) underline in relation to Aboriginal justice (quoted from Royal Commission on Aboriginal Peoples, 1996 p. 74).

> Traditional Indian justice rules and methods are not alternative dispute resolution'; they are the way things are done... They provide lessons for general methods of dispute resolution... Canada has the opportunity to foster and nourish Native laboratories for change. In doing so, it will give its nation and the world the advantage of seeing other approaches to justice, law, and government.

The Benefits and limitations of Restorative Justice and Development Issues

The Benefits

As the foregoing sections have made clear, restorative justice initiatives have demonstrated a range of benefits which the formal justice system does not offer. By utilizing reconciliation and mediation techniques in dispute resolution, rather than confrontation and retributive responses, restorative justice offers individual victims and offenders a more 'meaningful' and satisfactory way of dealing with the impacts of an offence. It is more personal. These benefits can also be shared by their families and other community members affected by the events, and lead to a consensual agreement about the outcome. The initiatives are flexible and can be utilized at all stages of the justice process from pre-charge to post release, and for adults as well as young offenders. Those involved in victim-offender mediation, in circle sentencing and conferencing have, on the whole, found greater satisfaction with the process that is the case with formal court processes. Mediation in particular has found high levels of satisfaction among offenders and victims taking part (90%-95%), and high levels of agreements have been reached. These approaches provide for both the emotional and the practical needs of victims and offenders, and for offender accountability, as well as assisting in the reintegration of offenders back into their communities by following up participants and providing support in fulfilling agreements.

For justice personnel and the formal justice system there are also considerable gains, including greater personal involvement. Cases can be dealt with much more swiftly than through the formal system. For example, Maxwell and Morris (1996) found that 85% of referrals for family group conferencing in New Zealand were dealt with within six weeks. The savings in paper-work and processing, in court time and costs can be considerable. The combination of diversion and conferencing in New Zealand led to a 4-fold reduction in the use of court, and 40% of all cases coming to police notice were dealt with by conference, as well as a saving of some $6 million (Morris et al. 1993). Both circle sentencing and conferencing have been able to work with more serious offences than mediation programmes, and in which there is often a considerable need for victim reconciliation and support. They have also targeted children from poor family backgrounds, and recidivists. There is now a much greater emphasis on involving the community in the justice process, and with more clearly defined roles. Restorative justice also seems to 'fit' well with the recent endorsement of diversion strategies in Canada, both formal and informal, and with the trend towards community-based solutions in corrections. And it seems to be compatible with the development of community policing across Canadian police forces.

For communities, restorative justice initiatives tap into the wider generational support of families and community members. The flexibility of these approaches is seen as a major strength, enabling them to respond to localized community needs as well as those of the individuals involved, and offering the possibility for greater community involvement in justice. They also allow for the development of partnerships between community organizations and volunteers, and justice personnel. For Aboriginal communities, restorative justice is seen as constituting not an alternative, but a return 'to the way things are done' (see Clairmont & Linden, 1998).

Some commentators go much further. Stuart (1996 p.308) for example suggests that circle sentencing and other mediation and consensus-building community approaches can contribute to:

i) rebuilding a sense of community
ii) strengthening and empowering families to take greater responsibility
iii) helping offenders reconnect to positive influences
iv) meeting the needs of victims
v) preventing crime
vi) reducing the costs of justice
vii) enabling the formal justice system to be more effective
viii) empowering victims, offenders and communities to share responsibility for resolving their conflicts.

The Limitations

It is also clear that restorative justice approaches have not been free from problems. These include short-comings which affect the immediate participants, the overall goals, and the organizations or systems initiating them. Many of these problems are common to all approaches, and the experience of past developments provides some important lessons for the future.

In relation to victim-offender mediation programmes, a number of problems have been identified over the years:

- level of police referrals often low
- used for minor cases, petty offences - the easy cases
- victims often not included, or receive less attention than offenders
- involvement of victim or offender not always voluntary
- lack of clear goals - diversion from prosecution not necessarily compatible with reconciliation or restitution
- net-widening
- lack of careful evaluation or monitoring
- funding vulnerability
- losing the vision
- incorporation by the formal justice system
- becoming too routinized

The experience of victim-offender mediation programmes in Canada and elsewhere has highlighted the often limited take-up of schemes, their `net-widening' effects (see below), their vulnerability to funding cuts, problems of lack of due process and the `voluntary' nature of the offender involvement and agreement, their use for very minor offenders - often commercial shoplifting without in many cases direct victims. To this extent the hoped for re-emphasis on the needs of the victim has often not been met by such programmes, and they have had very limited impact on the formal justice system in terms of diverting cases from custody or court. When victims are present, there has often been an over-emphasis on the treatment needs of the offender, and less on victim support. In many provinces the specific exclusion of more serious cases or repeat offences from diversion and mediation has further reduced the scope for impacting victims' concerns or direct offender accountability. The overall goals of mediation programmes have been seen as incompatible (Davies, 1992), and a major concern for those responsible for the development of early restorative practice has been the routinization of procedures, mediation processes and follow-up, with a loss of the restorative 'vision' (Umbreit, 1994). At worst there has been the problem of programmes being 'incorporated' into the formal justice system primarily as a diversion technique, rather than because of their restorative potential.

The number of criticisms of sentencing circles have also been made:

- focus too much on the offender, not the victim
- potential for power imbalances - partnerships unequal
- tends to be the most 'powerful' who speak
- no criteria for the selection of cases
- no formal guidelines, procedural safeguards
- decisions may not be seen as fair and may lead to sentencing disparity
- may only be appropriate for small, close-knit communities
- community may not be fully represented
- community may not be strong

As was discussed above, there has been considerable criticism of the imbalance of power in circles and the lack of support for victims which may be particularly serious in cases of assault by family members (Crnkovich, 1993, 1995). Many of the claims about the benefits of circle sentencing are seen as over-optimistic, with little evaluation to substantiate them (Roberts & LaPrairie,1996; LaPrairie, 1998; Clairmont & Linden, 1998). This includes its potential for reducing crime and recidivism, to reduce the use of prison sentences, or to change communities. The informality of the circle process, the lack of guidelines for the selection of cases, for circle procedures and their conduct, mean there are few guarantees of due process, and they are more open to manipulation than conferencing (LaPrairie, 1995). Roberts and LaPrairie (1996) also raise a number of questions about disparities in sentencing which result from circle decisions, which they argue, goes against the trend in North America towards equality of sentencing.[28] It is also suggested that the process may not be easily adapted to non-Aboriginal settings.

Finally, there has been considerable debate over the concept of 'community', how it is to be defined, who can represent it, how strong a community needs to be if it is to support and sustain offenders and victims following sentencing decisions. On the basis of her research in Saskatchewan, LaPrairie (1998) suggests that some Aboriginal communities are not strong enough to take on the leadership, mentoring and support skills required for successful circle sentencing outcomes.

The limitations of early conferencing practice have also been the subject of much discussion, and some of the major issues include:

- victims have not always been included
- victim satisfaction levels lower than other participants
- variable practices, poor monitoring
- facilitation and coordination by police questioned
- how voluntary is offender and victim participation
- are participants' rights protected
- how fair are decisions
- cultural appropriateness
- lack of funding and accompanying programmes to meet needs of offenders

Early practice in New Zealand suggested that victim attendance was not as high as expected, often because of lack of notice, although they were more likely to attend in serious cases. Satisfaction levels were lower than those of offenders and other participants, with 25% of victims feeling worse after the conference, and they often perceived offenders as getting more support than they did (Maxwell & Morris, 1996). With widespread development, variable practice also resulted.[29] The transfer of notions of shaming to other cultural groups, and the extent to which young people, surrounded by adults, authority figures and family members see themselves as free to exercise choice without undue pressure, and safeguards for female victims are all issues of concern (Stubbs, 1995; O'Connor, 1998). The involvement of the police in coordinating or facilitating schemes in Australian versions of conferencing has received considerable attention (eg. Bargen, 1995; Blagg, 1997, Jackson, 1998). It has been argued that the rights of young people cannot be protected if the police are responsible for arresting, coordinating and facilitating conferences, that a police station can not be seen as neutral ground, and that there may be mistrust of the police among young people (especially Aboriginal youth) which would inhibit their involvement.

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[28]. Individualized approaches are, however, what restorative justice aims to encourage, and to go against the trends in North American sentencing which are seen as so dismissive of victims and communities, as well as traditional Aboriginal approaches to justice.

Finally, a major issue is the funding of conferencing. Maxwell and Morris (1996) note that the budget for coordination of FGC's in New Zealand has been cut in recent years while demand has increased. Funds for youth services including conferencing fell from $8 million in 1990 to $2 million in 1994. This has increased the staff workload, cut youth workers' preparatory work, reduced funds for the transport of families from out of town, resources for community placement or family support and weakened conferences and decisions. They warn of `funding starvation':

> the savings inevitably made by fewer young people being processed through the courts, sentenced to residences, and sentenced to imprisonment or corrective training have not been reallocated to provide for the children and young people coming into the youth justice system. (Maxwell & Morris, 1996 p.103).

Issues in the Development of Restorative Justice

Some of the problems experienced in earlier projects can be avoided by good practice, and by vigilance, monitoring and evaluation. Other problems are more intractable, they are inherent in programmes which divert away from the formal system, and in the conflicting philosophies and goals of restorative and formal justice approaches. Newer concerns have also been raised by critics, particularly concerning the widespread and speedy adoption of restorative approaches, and the major involvement of the police. If restorative justice is to make a real impact on the delivery of justice across Canada a number of critical issues need to be confronted by all those attempting implementation including the police. They include net-widening; defining community; power imbalances; philosophy, goals and terminology; legislative impediments; justice issues; costs, benefits and funding, and evaluation.

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[29]. They have suggested that the lower levels of victim satisfaction compared with victim-offender mediation programmes relate to the 'system-wide' institution of conferencing in New Zealand, and the resulting variability of practice and monitoring.

Net-widening

In a recent discussion of diversionary programmes, Nuffield (1997) argues that whether diversion has been used for juvenile offenders or for adults, there has been evidence that cases which would never have been arrested have been processed through diversionary programmes, thereby gaining a record of police contact. At the post-charge stage there are indications of the use of diversion for cases which might not have resulted in a conviction. Thus one of the major criticisms of most diversionary programmes, has been that they increase the `net of social control' and signal the failure of attempts to reduce the use of the formal justice system (Cohen, 1985). Net-widening is a major problem for all 'alternatives' to formal sanctions, restorative or otherwise. It works in two main ways: minor offences which would otherwise be informally dismissed are drawn into the justice process, and receive sanctions which they may not need or merit; and alternative sanctions are 'added-on' to existing sanctions rather than reducing the use of custodial or other formal measures (Clairmont & Linden, 1998).

The initial evaluation of conferencing in New Zealand suggests these problems had been avoided there (Maxwell & Morris, 1996). Similarly, neither Dignan (1992) in Kettering, England nor Moyer & Rettinger (1996) in Ottawa found any evidence of net-widening in their evaluations of pre-charge adult diversion projects. However, Blagg (1997 p. 481) has argued that conferencing as it is being 'marketed' in Australia and elsewhere 'promises to intensify rather than reduce police controls over Aboriginal people'. In part, this relates to the origins of schemes, whether they are seen as an integral initial diversionary programme as in the Wagga Wagga model, or as a post-cautioning option as in New Zealand. Nevertheless, for all discretionary schemes net-widening remains an ever-present issue, though not an inescapable one (McMahon, 1992). **Responses:** Considerable safeguards will be needed to guard against these tendencies, with a clear focus on eg. using informal diversion but no further action for very minor cases which do not warrant fuller intervention, and reserving the use of restorative justice in combination with pre-charge diversion for more serious cases (as in the Ontario pilot study) (Marshall & Merry, 1990 p. 224; Moyer & Rettinger, 1996; Department of Justice, 1998).

Defining and engaging the community

As LaPrairie(1998) and others have pointed out, recent interest in the concept of 'community' and the indiscriminate use of the term is problematic. Bazemore and Griffiths (1997) see it as an amorphous concept which is used as a generic term to include too broad a range of interventions. For Crawford (1996) it has become the political buzz-word of the 1990's invoking in the romantic vision of smaller, cohesive societies, a response to the failure of the state to deal with major social problems, a way of off-loading some of the state's burden and with considerable cost savings. For some, he suggests it implies a reassertion of ethics, morality and social values, in the face of the dominant concerns for efficient and effective managerial government. In Canada much of the criticism relates to the invoking of Aboriginal communities in relation to sentencing circles, but the issues apply to non-Aboriginal communities and other forms of restorative justice as well.

The 'woolliness' of such rhetoric implies that all community solutions are better than the formal justice system, that all communities are definable, that their decisions will necessarily be good or appropriate ones, and representative of all their members, and that they have the necessary skills to support and sustain justice initiatives, or deal with persistent offenders. The term has also been used in different ways - in Aboriginal justice it usually refers to an entire band or village, in conferencing to the 'community of people affected by an incident', in community policing to an approach which concerns styles of policing in negotiation with community organizations or individuals. Even the term community justice can be seen as meaning all things to all people, including for some, an off-loading of government and fiscal responsibility onto others (eg. Goundry, 1997).

Not all restorative justice initiatives in Aboriginal communities have been sustainable, since those communities have been fragmented, poorly informed and unsupportive, or lack the resources needed to be supportive (Griffiths & Hamilton, 1996; Clairmont & Linden, 1998; LaPrairie, 1998). The experience of other community-based approaches such as crime prevention, and community policing, suggests that things work best in those communities where they are needed least (Hope & Shaw, 1988). In addition, crime prevention initiatives which offer quick and apparently simple solutions to local crime problems cannot deal with the underlying problems in those communities which generate crime and delinquency in the first place, any more than community policing can deal with some of the fundamental social problems without reform of broader policies (Brodeur, 1994; Crawford & Jones, 1996). In the same way, the development of community-based restorative justice will not deal with the underlying problems in communities, and cannot be expected to 'solve' the problem of crime: quick-fix solutions are not sufficient. **Responses:** Careful definition of a community; assessment of community crime problems; community strengths and weaknesses; who represents the community; their capacity and resources to respond to offenders, victims and offences are all essential.

Power imbalances

Linked to notions of the community are issues of power, its use and distribution (and the values underlying it). Communities may use their power in vengeful rather than restorative ways. There is no guarantee, for example, that Youth Justice or Community Justice Committees will necessarily endorse restorative principles, particularly where there have been serious or traumatic crime problems, or if there is strong local pressure for retributive approaches or zero tolerance policies.

If those community members involved in restorative initiatives do not, and are not seen to represent all groups in the community, there are likely to be power imbalances in the way projects are established. This can also affect the selection of cases, the extent to which they are voluntary, the conduct of proceedings, who speaks in conferences or circles, how outcomes are decided, and how much support victims receive. Of particular importance are issues of gender, culture and minority concerns and their representation and involvement. There has been criticism of the development of the restorative justice framework in BC, for example, for failing to discuss or consult community groups over gender or minority issues. Such neglect, it is argued, will result in lack of attention to the framework's implications, and insufficient safeguards being established. The appropriateness of reintegrative shaming for minority groups such as those of South Asian heritage is also questioned (Goundry, 1997).

The use of power also relates to the role of justice professionals in restorative initiatives. By virtue of their position, police, crown and defence lawyers, judges, probation officers, school officials and some family members all have authoritarian roles, particularly in relation to young offenders. Umbreit & Zehr (1996) see this as problematic and argue that professional power should not be used for 'breaking down kids' and then trying to build them up - that is not reintegrative shaming. This reflects a use of the rhetoric but not the philosophy of restorative justice eg. `shaming' without reintegrative concepts and some disturbing examples have already been noted.[30] As Braithwaite & Mugford (1994) stress it is the act which is to be shamed, and the actor reintegrated. **Responses:** Requires the establishment and explicit definition of goals and philosophy in partnership with community groups including minority groups; maintaining the balance between victims and offenders; as well as careful training, planning, monitoring and evaluation of initiatives.

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[30]. A man found guilty in the Ontario Court Provincial Division of masturbating in a park was ordered to stand in front of old city hall for five days with a sign round his neck, as well as paying a fine and seeking psychiatric treatment (Editorial, Globe & Mail 18.4.98). In England, the Inspectorate of Constabulary has suggested that the police should apply 'public shaming' to businesses and public institutions who fail to take crime prevention measures.

Philosophy, goals and terminology

The underlying philosophy and goals of initiatives are often reflected in their use of terminology. The many terms which have or are currently used to describe restorative justice illustrate the current struggle to establish an approach which meets the needs or visions of those groups proposing them. The language used in policy or programme accounts may reinforce a particular approach, eg. the discussion of diversion in the BC restorative justice framework is almost entirely in terms of offenders, and rarely focuses on victims' involvement or needs (Goundry, 1997). Marshall (1998) also points out that the notion of reintegrative shaming does not concern itself with victims so much as with offenders, which could lead to an imbalance in programmes. Alternatively, the lack of clear definition of goals and terms may result in the longstanding practitioners' fear - co-optation or incorporation of programmes (Umbreit, 1994; Walgrave, 1995). Failure to allow reconciliation and forgiveness to emerge spontaneously during mediation, for example, without being forced by the mediator would reduce sessions to utilitarian calculations of restitution (Umbreit, 1994).

Incompatibility between the goals of partners associated with restorative justice programmes is also a problem if some are primarily concerned with diversion or cost reduction, while others are striving to develop a new balance between the interests of victims and offenders in the community (Marshall & Merry, 1990). Differences in philosophy and goals may be embedded in the past training and working practices of particular groups, inspite of their willingness to rethink their practice. For this reason some commentators have suggested that justice, or community professionals such as police or social workers, may not be the best facilitators of mediation or conferencing, because they tend to retain their traditional offender and rehabilitative focus (Ban, 1996; Marshall, 1998). Conflicts between professionals and volunteers, and social workers or trained mediators have also been noted in past evaluations with their differential emphasis on offenders and victims (Marshall, 1998 p. 34).[31] **Responses:** Explicit definition of goals and philosophy at all system levels; careful training, planning, monitoring and evaluation.

Structural and legislative barriers

Legislative and structural barriers may restrict the flexibility which is seen as an essential aspect of restorative justice, or reinforce the tendency to avoid difficult cases, such as youth at risk and those with the least family or community supports (Clairmont & Linden, 1998). For example, the evaluation of the adult diversion pilot programmes in Ontario revealed the high proportion of women and shoplifting cases diverted. While this partly reflected the preponderance of minor theft cases coming to police notice, it was also a consequence of the policy of only targeting minor cases without risk to the public. Offences involving disputes and violence were specifically excluded (Moyer & Rettinger, 1996). Similar restrictions have been imposed in BC and Saskatchewan. This is not the aim of conferencing as it has been developed, nor the vision of advocates of restorative justice. **Responses:** The development of good restorative justice models requires a balancing of flexibility and discretion with safeguards and protocols.

Justice issues

These are likely to arise with informal justice, diversion, cautioning, as well as conflict-resolution approaches. The lack of due process, of clear definitions and vagueness of procedures have all been criticised, particularly in relation to sentencing circles but also conferencing (La

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[31]. Elsewhere, Marshall (1996) distinguishes between a social work model concerned with changing the offender and an independent mediation model which seeks to resolve issues arising out of the offence.

Prairie, 1995; Roberts & LaPrairie, 1996).[32] For Braithwaite and other proponents, reintegrative shaming is firmly grounded in legal pluralism (Braithwaite & Mugford, 1994). The importance of admitting involvement in the offence is seen by most as an essential safeguard of due process, but not sufficient protection by some (Dignan, 1992). Goundry (1997) questions the lack of discussion of Charter rights such as access to legal counsel, equality rights, and the right to appeal in the BC framework. Blagg (1997) sees due process issues at risk in police-run conferencing programmes with Aboriginal youth in Australia, in spite of claims to the contrary (MacDonald, 1995 in Jackson, 1998). LaPrairie, (1998) questions the justice implications of diverting large numbers of offenders, if those found ineligible for restorative justice are largely the most isolated and marginalised members of society with the fewest social and economic resources.

Sentencing-outcome disparity is a concern for some observers. Yet mutually agreed decisions tailored to the people and circumstances of each case are part of the aim of restorative justice. Confidentiality issues also arise when multiple parties are involved in discussions about cases (Marshall, 1998; Hughes et al. 1998). This impacts the sharing of information between agencies, community representatives and within conferencing sessions or circles. **Responses:** Establish agreed procedures, protocols and strict rules on confidentiality. Establish regular training and review sessions to guard against discriminatory selection practices, and ensure that decisions in restorative programmes are not over-penalizing nor greatly discrepant.

Costs, benefits and funding

Two major areas of concern have been raised in relation to costs and benefits: the extent to which costs should be allowed to dominate programme and policy decisions and designs, and the problem of their calculation. These issues have been common to many past community justice initiatives (Knapp et al., 1992; McMahon, 1992)[33].

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[32]. The 1984 YOA was specifically designed to ensure the rights of young people, allowing for their legal representation in court. Ironically, this may have distanced young offenders from the events and emotions involved. Restorative justice aims to confront personal responsibility in a more direct and meaningful way.

i) Many observers have argued that costs should not be allowed to drive initiatives because of the impact this is likely to have on outcome, apart from their effect on the overall philosophy and goals (Marshall & Merry, 1990; Knapp et al.,1995; Goundry, 1997; Clairmont & Linden, 1998). It has long been pointed out, for example, that more 'efficient' projects with higher caseloads are not necessarily more effective (Palmer & Lewis, 1980). Maximizing the number of cases may lead to the inclusion of cases which do not need the intervention, or are otherwise unsuitable. It may also reduce time for preparation and follow-up of cases, and jeopardize the quality of the outcome (Marshall & Merry, 1990). Mair (1995) argues that costs should be only one measure in the evaluation of community penalties.

The funding of projects is an immensely important issue. Past experience of victim-offender mediation programmes suggests it is unrealistic to expect police or probation staff to initiate and maintain projects without additional funds, given the always competing demands on time and resources (Marshall & Merry, 1990).[34] Experience also underlines the importance of providing sufficient funding for community organizations to maintain the quality of service, but also to provide programmes for referral from conferences (Maxwell & Morris, 1996 and see p. 32 above). In terms of funding sources, privately funded projects tend to be more flexible, innovative and individualized than publically funded ones, but they are also much more vulnerable to funding starvation. Projects funded or initiated by the justice system tend to have less flexibility, but a higher likelihood of survival in terms of receiving referrals and funding (Divorski, 1987; Mair, 1995).

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[33]. As Maeve McMahon has demonstrated, the expansion of community programmes in Ontario from the 1970's was a consequence of fiscal concerns much more than reformist enthusiasm for alternatives to prison.

[34]. A conclusion based on a study of mediation schemes run by police, social workers and community agencies.

ii) Calculation of the costs and savings, and the benefits, of restorative justice initiatives is not easy. Such calculations in the social policy area are very different from those in the corporate sector where revenues can be set against costs and are usually well-defined.[35] While it may be possible to put a dollar value on many of the costs of social programmes, there is no revenue to set against them, and social benefits such as the reduction of crime or fear are more intangible and difficult to measure. Knapp et al., (1992) suggest four rules that should be obeyed when costing community services: they should be measured comprehensively across a full range of agencies and individuals affected by a policy or practice; cost variations across a country (or province) and between different individuals must be examined and 'explained'; comparisons between services, areas, agencies and clientele must be made on a like-with-like basis; and costs should be integrated with outcomes. These rules, however, present 'formidable conceptual and practical problems' (p.9).[36]

Both the direct costs of services (eg. staff salaries, office space, travel, telephone, photocopying etc.) need to be included as well as indirect or hidden costs. Most assessments exclude hidden costs such as overheads, support staff, initial start-up and training, or those costs falling outside the immediate departments or organizations concerned, and which are also more difficult to measure. Many of the benefits of programmes are similarly difficult to measure. For example, Braithwaite and Mugford (1994 p.166) argue, that if the costs of victims' and their supporters' time in attendance at conferences were added in, as economists might argue, then the savings from conferencing would be much lower. But in that case the benefits to those victims and supporters should also be included, although these are less tangible and not easily costed. Knapp et al., suggest that costs should also be broken down and linked to specific activities eg. in relation to conferencing this might include the assessment of case suitability and needs, preparation of the conference session, the conference itself, follow-up monitoring, costs of any treatment programme, costs of failure to complete agreements.

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[35]. See L. Squire & H.G. Van der Tak (1975) for a standard introduction to cost-benefit analysis.

[36]. They also point out that most routine cost data in criminal justice is very inaccurate, and found community service orders were more costly than expected.

The costs associated with running programmes will vary in terms of who delivers the services and at what level (salaries usually account for the majority of service costs), the size of a project, the type of agencies involved (community organization and/or statutory services) as well as factors such as their location, the numbers of cases going through in relation to staffing, and the types of clientele. For example, conferencing projects which utilize a community or youth justice committee; those which rely primarily on the police to initiate, coordinate or facilitate; or those in which the police refer cases to an independent community mediation organization, will all have different costs. Projects in remote rural areas are likely to have higher costs than those in urban centres because of travel costs and a lower turnover of cases as Moyer & Rettinger (1996) suggest. And all projects will have overhead costs regardless of the numbers of cases processed, and the costs of support staff are not always included in calculations, while start-up costs may be considerable because of training needs.[37] Moyer & Rettinger also point out in relation to diversion programmes that while it may be more costly to fund community agencies than conduct programmes 'in-house', there may be benefits in community involvement which outweigh those costs.

The kinds of cases included will also have cost and benefit implications (Knapp et al., 1992). Minor offences and offenders may not be the most efficient to target, particularly if a less invasive and costly solution such as formal cautioning could have been used. While the possibility of failure may increase for more serious cases, cost-effectiveness argues for taking on more serious cases, including violent offences, where there may be greater gains for victims and offenders from restorative solutions, rather than minor offences which do not require such intervention (although victim impact will not necessarily relate to the seriousness of the offence).

All these factors will result in considerable variation in the costs of individual projects, therefore, even when they are apparently quite similar. Knapp et al. (1992) found the direct costs of a community service order varied from £350 to £996 across 10 projects. Umbreit (1994) found considerable cost variation between three victim-offender mediation programmes in the US from $294 a case to $986, with indirect costs (partly because of the way expenses were calculated) ranging from 9% to as much as 31% of direct programme expenses. Marshall (1998) reports costs ranging from £150 to £300 per case in mediation programmes in England and Wales, compared with average prosecution costs of £2,500 per case.

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[37]. eg. the community contract for the Ottawa adult diversion programme was $340,000 over three years, of which $142,000 was for start-up costs including training (Moyer & Rettinger, 1996).

As indicated above (however they were calculated) the cost-savings from diversion and conferencing by the avoidance of court and institutional placement in New Zealand were substantial. Marshall & Merry (1990 p.224) similarly found substantial savings from avoidance of court proceedings from victim-offender mediation programmes in England and Wales. As they pointed out, avoiding three one-year prison sentences would have paid for the cost of one post-charge mediation scheme.

It is clear, therefore, that there must be savings in the Canadian context from using restorative justice in place of formal court proceedings, especially at the pre-charge stage. In relation to the adult diversion programme in Ontario, Moyer & Rettinger (1996) calculate these ranged from $66-$132 per case. Further, with an average annual cost per offender in the federal system of $45,753 in 1993-4 (Corrections in Canada, 1994) or provincially in Ontario of $........ the avoidance of incarceration would represent considerable cost reduction in the long-term. And in addition to all such savings there will be social benefits beyond the avoidance of court proceedings or incarceration. In relation to community service orders Knapp et al. (1992) concluded that the community benefits 'are undoubtedly positive and undoubtedly greater in value than the corresponding benefits of imprisonment'. For restorative justice, which claims, for example, to provide emotional benefits to victims, offenders, their families and community members, the calculation of such benefits presents even greater challenges than for more traditional community programmes.

Evaluation

The lack of evaluation of the effectiveness of restorative justice programmes has been a major complaint over the past 20 years (Roberts & LaPrairie, 1996; Bazemore & Griffiths, 1997; Clairmont & Linden, 1998). Evaluation performs a number of important and accepted roles as Clairmont & Linden stress:

- it enables those setting up programmes to assess how far they are meeting the goals established,
- it enables claims for the effectiveness of an approach to be substantiated,
- but it also provides for accountability by programme staff and partnerships to their communities, and to funders.

Less agreement exists about the parameters of evaluation. The formal justice system has for many years relied on reconviction as its main measure of successful programmes, but there are increasing arguments that the evaluation of restorative justice (as well as other community programmes) should not rely of the standard tools of reduction in crime rates or recidivism (eg. Clairmont,1991; Umbreit & Pate, 1993; Umbreit, 1994; Crawford & Jones, 1995; Stuart, 1997). For example, measures of participant satisfaction, community involvement, as well as short-term outcomes such as completion of agreements are all seen as important ways of evaluating community programmes. There is a need to look not just at one criminal justice outcome but also at the process itself, at how a project is implemented, what side-effects there may be, both good and undesirable, and at the medium and long-term changes as well as immediate ones. Stuart (1997) and other advocates of restorative justice stress the importance of evaluating outcomes against those of the formal justice system eg. recognizing that that system is characterized by considerable failure in terms of sentence outcomes and participant satisfaction. In the view of many observers, expectations about substantial changes resulting from community justice initiatives should not be raised too high.

Nevertheless, like the problems confronting cost and benefit calculation for social programmes, community programme evaluation presents difficulties in terms of the identification and measurement of often intangible outcomes. Clairmont (1991) has pointed to the difficulties of evaluating community policing, of demonstrating that it has an impact on crime or fear of crime, on community relationships or the attitudes of the police themselves.[38] Many of its assumed benefits may not be evident for some years. In relation to conferencing, O'Connor (1998 p.49) points out that 'there is scant empirical evidence on how conferences work in practice and their impact on participants' apart from early studies in New Zealand (Morris & Maxwell, 1993) and Australia (eg. Hudson et al., 1996).[39] At present in Canada there exist a lot of what have been termed 'anecdotal and impressionistic descriptions of pilot or demonstration projects'[40] in circle sentencing and conferencing. These form an essential first stage in the development of these concepts, but if restorative justice is not to fall out of favour before projects have been properly established, more systematic evaluation is necessary.

A number of stages can be identified in project evaluation:

- a front-end analysis to help prepare a project
- monitoring of all routine information on cases from the beginning of the project
- evaluation of the process and implementation of the project
- evaluation of the impact or effectiveness

Adequate planning of projects is essential to their survival, and that phase should include planning the subsequent evaluation (Clairmont & Linden, 1998). Monitoring requires the systematic recording of basic project information so that a picture of the processes, the types of cases included or rejected, assessments, outcomes etc. can be built up. The implementation of projects has been described as an on-going process of adaptation, negotiation and communication (Harris & Smith, 1996) and is a crucial aspect of community projects which has often been ignored in the past. Greater attention to the context in which projects are developed, to particular local pressures or conditions, is important and may demonstrate progress and changing attitudes when no hard reduction in criminality is measurable. It can also assist in the development of projects to ensure they are not losing track of their goals, or ways in which they can best adapt to the needs of their local community. It is often the less concrete aspects of project implementation, such as levels of community support or the way it is organized, which may make the difference between success and failure (Crawford & Jones, 1996; Harris & Smith, 1996). In other words projects may fail not because they are poor ideas, but because of poor implementation. Finally, assessing impact follows from the previous stages, may be conducted by project staff or externally, and range from short-term measures of satisfaction including victim views, completion of agreements etc. to longer-term follow-up of cases, including re-offending if appropriate, costs, and comparisons with other projects, or with cases processed through the formal system.

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[38] See also Hornick, Leighton & Burrows (1993) for a detailed discussion of the evaluation of community policing.

[39] He notes two major studies of conferencing are currently underway: the RISE or Reintegrative Shaming Project in ACT, and SAJJ or South Australia Juvenile Justice Research on Conferencing

[40] See the discussion in Hornick, Leighton & Burrows (1993 p.63) relating to community policing.

The kind of data used to evaluate programmes is also an important issue, and most of those concerned with community programmes argue for the importance of using a range of sources, both qualitative as well as quantitative. Qualitative information such as detailed interviews with participants located at different levels in the system and organizations associated with a project, or observations of conferences, are important ways of assessing attitudes and understanding in the implementation and impact stages. The involvement of all project staff and close associates in the development of monitoring and evaluation approaches and measures is also recommended, even if primary responsibility rests with particular individuals.

Since evaluating a programme is integrally related to how it is set up, and what the goals are, most guides provide detailed lists of how to develop restorative justice projects, and how to set up monitoring schemes to keep track of cases as a preliminary to fuller evaluation. Thus Umbreit (eg.1994) has provided detailed accounts of how to evaluate mediation programmes setting out a series of nine question areas (who participates, how does the process work, what do participants think of the process, what do court staff think, what are the immediate outcomes in terms of numbers of sessions, agreements etc, what is the impact in terms of completion rates, recidivism, cost implications, and attitudes about fairness) with recommended data collection sources including court records, programme records, and interviews. Like most writers he stresses the importance of collecting both qualitative as well as quantitative data, and the measurement of immediate as well as middle and long-term goals.

A number of excellent guides to project evaluation have recently been completed in Canada and elsewhere eg. Clairmont & Linden, 1998 (designed to help Aboriginal communities set up, and evaluate restorative justice initiatives); Sharpe, 1998 (written by an experienced and trained mediator to help community groups set up and evaluate restorative justice projects); Nicoll, 1998. The Edmonton police project (Wickins, 1998) developed a guide to developing and monitoring practice. Bazemore & Griffiths (1997) Stuart (1996) and LaPrairie (1998) all provide some general guidelines for avoiding problems. In a US study Nicholl (1998) provides a series of guides to the development and evaluation of restorative justice projects for community or other groups including the police.[41] Apart from recommendations for the collation of information on victim and offender characteristics, agreements, levels of completion etc., Clairmont & Linden (1998) provide lists of questions which evaluations of restorative justice projects should try to answer in relation to four components: whether victims receive justice; whether offenders receive justice; whether the community receives justice; and how far the community has been involved in the provision of justice. They also stress the importance of evaluating issues of consent, cultural sensitivity, equality and efficiency. (See Appendix II for additional evaluation information).

Finally, it should be noted that monitoring and evaluation themselves have cost implications, and require adequate staffing and funding.

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[41]. See also Step by Step: Evaluating Your Community Crime Prevention Efforts. (1997). Ottawa: Department of Justice.

Challenges for the Police and Communities in Canada

Some of the critical issues confronting those attempting to establish restorative justice have been discussed in the previous section. This section considers some of the specific challenges facing the police and their local communities if they are to take on a major role: one concerned with social justice and peacekeeping rather than with law enforcement and gate-keeping as Moore (1992) has suggested. To re-think the delivery of justice involves more than increasing the discretionary role of the police and the scope for diversion, or providing brief training sessions.

Community Policing and Restorative Justice

The current period is an unsettling one for police services including the RCMP and the OPP, because of downsizing and reorganization, apart from changes stemming from community policing (Beare et al., 1996). While there has been some concern with the impact of policing on restorative justice, little thought seems to have been given to the impact which restorative justice could have on policing. Restorative justice in fact presents a number of challenges to policing, many of them associated with community policing and the problems of effecting change.

There are considerable hopes vested in community policing in Canada in relation to Aboriginal communities as well as non-aboriginal ones (Clairmont, 1991; Depew, 1992). As discussed in Section III, Brodeur (1994) characterizes community policing as 'relational', as being concerned with relationships between groups, individuals and organizations in a community. Unlike traditional response-based crime control models of policing, it clearly has close parallels with restorative justice in terms of shared values. These values are summarized in the diagram below:

Community Policing	**Restorative Justice**

Broadened mandate - problem solving rather than crime fighting	Problem-solving, not blame fixing
Shared responsibility - establishing partnerships with the community	Community takes on some responsibility for justice issues
Pro-active approach - concerned with underlying problems generating crime	Reintegration and restoration of offenders and victims, community healing
Decentralization geographically and operationally - empowerment of line officers	Localization of initiatives; stress on non-professional involvement in justice at local community level
Softer policing - use of persuasion, communication, mediation rather than force	Mediation, communication and consensus building

Such a close alignment of principles, or on paper, does not mean the two approaches are synonymous, or that police involvement in restorative justice even in those forces with a strong community policing model, will be without problems. Restorative justice seeks to establish an alternative to the formal justice system; policing, even in its community reformulation, is still a part of that system. Both approaches have become fashionable, and the subject of considerable attention. They have been 'talked up', but as ideas not yet fully translated into practice this can lead to considerable conceptual confusion (Clairmont, 1991). Like restorative justice, community policing tends to mean all things to all people - part of the reason for its widespread appeal. Yet without clear statements of goals and fundamental principles and good implementation strategies, there are dangers that community policing will be a superficial exercise. And both community policing and restorative justice are in danger of being defined as, and reduced to, a series of programmes to be incorporated, as Walgrave underlines in relation to the latter (1995, p.240):

> One could say that the most serious threat to restorative justice is the enthusiasm with which police officers, magistrates and social workers insert mediation and community service as simple techniques into their traditional punitive and rehabilitative approaches.

While it seems to offer the right model for supporting restorative projects, the development of community policing in Canada has not been uniform across the country or within police services. Nor has it been without its critics (eg. Harding, 1991; Hornick, Leighton & Burrows, 1993). As Brodeur (1994) notes there has been only partial adoption of a community policing model, whether a fully developed one or in a partial form. Not all members of police services are themselves convinced of its utility, even when it has been adopted in principle. Clairmont (1991) suggests there has often been little community involvement in early community policing experiments, although more successful models are also evident (Hornick, Leighton & Burrows, 1993). Community policing has been established in parts of Edmonton since 1988, for example, and now covers the whole police service, giving the Edmonton Police Service a good basis for developing community strategies. Nevertheless, a recent study by Beare et al. (1996) still found considerable variation in the acceptance of community policing across Canada, whether in contracted RCMP detachments or provincial or municipal forces, in spite of its overall adoption as policy in those forces. They also found a direct relationship between the level of acceptance of community policing as an operational model, rather than just public relations work, and positive interactions with street youth. Developing good restorative justice will clearly be easier among forces which have a strong commitment and practical experience of community policing. And restorative justice can also have a positive impact on progress to full community policing.

As with all innovations, the challenge lies in turning ideas into practice with the identification of goals, and deriving specific policies and training in relation to those goals which can change both police organization and practice. The way restorative justice is developed as a policy at government level and within police services, transmitted to all levels within the police service, and to other partners, the approaches taken at the local level to put programmes into practice, will all have a critical impact on overall success or failure - it is not just a question of developing a few good individual projects (Mair, 1995). Beare et al. (1996) identify a number of problems facing innovations in policing. Apart from the variable implementation of community policing, they note that police occupational culture, the limitations of training, and 'the vulnerability of all policing initiatives to the diverse personalities, preferences and abilities of individual police officers' all present barriers to change (p.8). They suggest changes to the incentive and evaluation system for officers, as well as more flexible job specifications and shifts would help to break down some of those barriers, but also changing the police perspective on what constitutes 'real' police work, to problem-solving policing ie., reducing internal resistence to innovation stemming from the occupational culture of the police.[42]

Changing police culture and practice

Observers of policing have often cited police culture as one of the major factors which inhibits change: just providing training and new directives will not be sufficient (Manning, 1989; Shearing & Ericson, 1991; Dixon, 1995; Chan, 1996). Initially defined as sets of negative attitudes, values and practices held by the majority of police officers - a set of rules for action - police culture has more recently been seen as less intractable and deterministic. It is now regarded as a set of learned sensibilities, or ways of thinking or feeling, which are dynamic in nature, both influencing and influenced by the surrounding environment. It is seen as transmitted primarily through stories and anecdotes recounted on a daily basis (Shearing & Erikson, 1991). Thus, it is argued, changing police practice requires the creation of new stories which will in turn create new and different sensibilities:

> This cannot be done simply through training sessions with recruits or even with follow-up training but has to take place in a much more pervasive way. To create new stories, one has to find and celebrate ways of policing that the established occupational culture has silenced. (Shearing, 1995 p. 57).

In part, Shearing suggests, this can be accomplished by relocating policing in a different institutional context, which will have 'a different sensibility'. He identifies a shift in a number of countries from a close and exclusive identification of police practices with the state and the criminal justice system, to an activity also carried out in civil society, whether in terms of private policing, or partnerships with community members through community policing (Dixon, 1995;

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[42]. Clairmont (1991) formulates these slightly differently as attention to pay and budgets, better education, and a critique of the existing philosophy of policing, or what he terms 'knowledge'.

Shearing, 1995). Thus, he suggests some of the conditions for changing police culture are already in existence. In a detailed study of the implementation of community policing in NSW Australia, Chan (1996) argues that formal rules and operational policies, as well as the social and economic context - the structure in which policing takes place - can have some affect police culture, by altering day-to-day knowledge or sensibilities about objectives, for example. While she concluded that community policing had only been implemented at a superficial level in NSW, her work is helpful in underlining the flexible nature of police culture, as well as the need to see policing within its broader context. Thus police culture can be seen as an important key to developing both community policing and restorative justice. Restorative justice can help community policing by giving the police 'different stories' to tell.

In Canada, Brodeur (1994) concludes that in spite of the variable practice, some shift in the location of policing from the state to civil society has begun to take place. He points out that recent policing experience in crime prevention - one aspect of community policing practice - has provided valuable knowledge about the development of partnerships with the community.[43] Beyond such practical advantages, he demonstrates how recent developments in community policing which stress the reduction of incivilities, have shifted the focus from seeing crime as a cause of insecurity, to seeing insecurity as a cause of crime and thus reinforcing the role of the police in crime control from within the community, rather than apart from it (Brodeur, 1994). This shift of policing towards the community raises questions about who can and should take decisions on justice issues, how much power can or should be shared with organizations or individuals outside the police and formal justice system, and how far the police should take the lead in defining community involvement (Dixon, 1995). It also raises the possibility that state power can be 'co-opted' by the community (Braithwaite &Mugford, 1994). These are all questions which require considerable discussion within police forces as well as between the police and their communities.

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[43]. He cites the Tandem crime prevention initiative in Montréal as a successful example of a partnership in which the police acted as catalysts in mobilizing the community and continue to work with them.

Training and stability

Even if training is only one of the conditions for developing restorative justice it still requires considerable attention. This relates both to cadet training on restorative justice, as well as training in specific approaches such as conferencing. Lack of knowledge on the part of the police was seen as a major stumbling block in the Ottawa adult diversion programme, a more traditional criminal justice initiative (Moyer & Rettinger, 1996). They suggest that the extent of police support for the concept of diversion would crucially affect the wider development of such schemes. How much greater are the difficulties of developing knowledge about restorative justice likely to be?[44]

Nicholl (1998) and others have expressed concerns about three-day training sessions in conferencing without attention to the organizational context in which it takes place, and the application of rigid generic models. Marshall (1996) warns against 'rushing into' conferencing. He cites the careful training and preparation laid down in the victim-offender mediation field over some 15 years. Maxwell & Morris (1992) stress the importance of commitment to the overall philosophy and objectives of restorative justice, with good initial and effective on-going training, as one of the best ways to counter the resistence which will inevitably arise among existing professionals or community members. There are many warnings about overextending - of developing too fast, without community and background preparation of the programme or individual conferences, for example, of taking on too many cases, or specialized cases without the necessary training.

The development of good restorative models as well as community policing also requires stability, both to ensure that training can be utilized, but also to allow officers to develop good personal knowledge and links with the community as Beare et al. highlight(1996 p.12):

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[44] The only clearly restorative option ('sanction') available in the Ottawa project - mediation - was used for just 1.3% of the cases diverted during the study.

> Training the police in any new area of police work must be seen as an on-going process. Police are transferred, retire, or shift to new functions. Policy implementers cannot assume that the police officers who received the printed materials and teaching tools and received the training courses are the officers who are presently doing the tasks. After even a two year period, there will be a significant turn over of personnel.

Such stability has not been the pattern of policing in many communities in Canada, particularly those policed by the RCMP. It is also suggested that there needs to be complementarity between the internal organization of police relations and the techniques being developed in restorative programmes - that similar techniques for dealing with disputes and conflict should be used within the organization (Nicholl, 1998; McMechan, 1998). In this respect there would appear to be links between the Alternative Dispute Resolution programme of the RCMP and restorative justice.

Developing new relationships with community members, setting up partnerships, planning, implementing, monitoring and sustaining programmes all require different sets of skills._ Different restorative approaches also require separate skills eg., conferencing and mediation programmes require different, although linked, skills from mediators and facilitators, as well as personal qualities in terms of empathy, patience, mental agility, and an ability to handle emotional situations (Umbreit & Zehr, 1996; Marshall, 1998). As Ban (1996 p.150) puts it: 'To run family conferences requires an acceptance of values consistent with the application of the technique and the use of appropriate skills.'

The policing environment

Apart from statements of philosophy and goals, organizational changes, training and new police sensibilities other - external - factors also impinge on policing and the scope for developing restorative justice. Public attitudes to the police form an important part of local policing environments in shaping both policy, practice, and police culture.[45] While generally favourable compared with some countries, attitudes towards the police in Canada vary considerably across age, social and cultural groups, and there is considerable mistrust among some sectors (Griffiths & Verdun-Jones, 1994; Commission on Systemic Racism, 1995; Beare et al., 1996).[46] This relates in part to the extent and nature of police interaction with such groups. Perceptions of racism or over-policing need to be dealt with. Further, if community policing, in its attention to reducing incivilities, adopts zero tolerance policies, this is likely to be perceived as harassment and exclusion. Should conferencing be used to deal with the kinds of charges likely to result? Would it be worth trying? Would the police be prepared to have its own policies and attitudes towards those offenders considered in a conference session? What are the implications of excluding certain groups from a restorative approach?

Public attitudes will impact the extent to which community members as well as offenders and victims are willing to collaborate in community justice committees, other partnerships or in conferences with the police. They will affect the extent to which victims or community members feel they have achieved some measure of justice. They will also influence the willingness of a community to accept restorative justice as an alternative to retributive justice. Local and national media often play an important role in shaping public attitudes. Brodeur (1994, p.76) points to the media as one of the roots of the problem of crime and insecurity in communities with their 'obsessive attention' to fear: 'An alarmist press appreciably undermines the efforts of community policing to lessen feelings of insecurity.' (He argues in fact that this should be tackled first, rather than seeing community policing as the solution). The press have been quick to exploit and challenge restorative justice decisions in Canada and elsewhere (Stuart, 1997;

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[45]. The Commissioner of Corrections has similarly referred to public perception is a 'mega-force' in determining the direction of correctional policy even when it is out of touch with the reality (Globe & Mail, 17.3.98).

[46]. While recognizing the difficulties of working with street youth they emphasise that police skills and techniques used with youth in schools are not often applied with street youth who perceive the policing as 'harassment, interrogation and a degree of hostility that can do nothing but escalate the existing levels of mutual antagonism and aggression' (Beare et al., 1996 p.15).

Maxwell & Morris, 1996) so while restorative practices present an opportunity to begin to change public views about crime, they require good, and continual, communication and dialogue. As Doob & Roberts (1983) have demonstrated, public punitiveness tends to diminish when the particular circumstances of cases are understood.

The particular characteristics of local communities in terms of their strengths and weaknesses, their sense of identity and ability to sustain restorative approaches, as discussed in the previous section, also form part of the policing environment, as do the characteristics of local crime problems and the groups most often the subject of policing activity. All these factors require approaches and partnerships to be tailored to local needs and strengths and weaknesses. There is no generic 'blueprint' - each police force and division needs to work out its approach in relation to its local context, and with identified groups in that community.

The police role in conferencing

The possibilities for police involvement in restorative justice are greatest at the pre-charge stage, at the point of closest contact with community members and agencies, and conferencing seems to offer a much more expanded role than that of referral, usually associated with mediation programmes for example. Much recent concern about the involvement of the police in restorative justice relates to conferencing, only partly because of the speed and enthusiasm with which this approach has been 'adopted' by police forces. Concern about the growth of police-led projects stems also from fears about the professionalization of restorative justice, and the potential for domination by professionals. Similar concerns were expressed in the 1970-80's about the 'professionalization' of mediation against the vision of returning justice to citizens (Christie, 1977). Since that period the field has changed considerably, becoming an 'industry' with many people now making a living from mediation (Interaction,1997).

Apart from the problems of conceptual confusion and the difficulties of effecting change in police culture and practice, a number of key questions have been raised about the practical implications of police involvement. These include who should initiate conferencing and at what stage; whether the police should assess cases; whether the police should be the lead agency; whether they should coordinate conference sessions; whether they should facilitate sessions; whether the police station is an appropriate venue for conferences; whether they should speak first. As suggested above, the development of police-led conferencing projects in a number of Australian provinces has raised considerable discussion (Blagg, 1995; O'Connor, 1998). Blagg (1995) is critical of their use with Aboriginal youth. He suggests victims are less likely to be satisfied in police-led schemes, and that mistrust of the police in part accounted for the reluctance of Aboriginal youth to attend conferences, or talk if they did attend. There is also concern that greater police control over informal diversion and cautioning is likely to lead to over-policing rather than less, and will increase existing disaffection among Aboriginal youth and the police. Such problems are of considerable relevance in Canada, given the high levels of Aboriginal involvement in the justice system, as well as among other minority groups. They have implications for the RCMP and the OPP, both in terms of Aboriginal communities on reserves and in urban areas, as well as the Black communities in Nova Scotia and Toronto, and other minority groups in the Toronto area. Vancouver, Cole Harbour, Kenora and Ottawa represent very different communities and policing environments.

On the whole, most commentators argue that the police should not facilitate conference sessions, and that they should be held on neutral ground acceptable to all parties. Many argue against an exclusive police role in assessing the suitability of cases, or as coordinators, and in favour of community partnerships and shared decision-making. One of the most frequent recommendations, which also meets some of the due process concerns in police-initiated conferencing, is referral of cases to an independent community mediation centre, or the use of an independent community facilitator to conduct conferences as in the Edmonton model. Selecting a facilitator who relates to the characteristics of the community or the conference participants, whether Aboriginal or non-aboriginal is also important. Translators may also be needed. An independent facilitator allows the police (or other statutory authorities such as probation officers, social workers, children's aid workers) to take part in conferences as sources of key information

(Ban, 1996 Marshall, 1997). Umbreit & Zehr (1996) suggest using a co-facilitator who is a community person if the police, probation or another authority figure facilitates.

Consideration also needs to be given to whether conferencing is to be used with young offenders or adults. Most existing examples of conferencing relate to young people (including offenders coming to police attention, and in schools). Little experience of conferencing with adults has been examined or evaluated, and there may be some significant differences, for example, in the extent to which notions of shaming can be utilized with young people compared to adults (Braithwaite & Mugford, 1994). The role of the family may also be different. In addition, adults are less likely to have close family members located nearby or who are willing to enter into a conferencing session. There may also be significant differences in the extent to which reintegration can be achieved, or a community is willing to allow for the reintegration of an adult. The capacity of local agencies to support the families of offenders (and victims) also needs to be carefully considered. Conference agreements may prove too difficult for families already 'weighed down with their own problems' (Marshall, 1997).

Given the extensive criticism of their neglect in past restorative programmes, considerable thought needs to be given to how victims are approached and treated by the police, given their primary focus on offenders. In the first place a major aim of conferencing must be victim participation, but without coercion. While it has been suggested that victims will agree to take part in conferences if they are made to 'feel important' (Braithwaite & Mugford, 1994) there is clearly much more to consider. This may be particularly problematic in cases involving women, personal violence, and victims from minority groups. Extensive preparation, skilful facilitating and follow-up support all need to be in place for victims, utilizing community support groups where possible and appropriate. Further, if as some people have suggested, the selection of cases for conferencing should be made on the basis of the victim's needs as much as the characteristics of the offence or offender, this implies a shared role and not an exclusive police role (Dignan, 1992). It also suggests that the impact on the victim needs to be considered since it will not necessarily relate to the gravity of the charge.

Developing partnerships and inter-agency links with the community

As the discussion above has suggested multi-agency and community partnerships would appear to be favoured as ways of avoiding many of the problems inherent in the development of restorative justice, including net-widening, justice issues, too close identification of schemes with the police, over-policing, or over-enthusiasm (see eg. Jackson, 1998). Regular team meetings also seem to be a major way of avoiding either over-intervention or net-widening (Hughes et al. 1998). Team discussions between specialized community and police victim services are also recommended for cases involving partner or other violence, both for eligibility decisions as well as conference preparation.

Although a central aspect of community policing, the development of partnerships is not as straightforward as might be assumed. The experience gained in recent years by the police in developing crime prevention or neighbourhood watch programmes, or setting up consultative, multi-functional or inter-agency community committees has been instructive. It is common for community organizations to be dominated by professional agencies, particularly the police (Marshall, 1998). In multi-agency partnerships it is also the police who usually dominate, and as sources of referrals for criminal justice projects, their role is often the defining one (Hughes, et al. 1998). In her study of community policing in NSW, Chan (1996) is critical of the reliance on middle-class, respectable citizens, and the tokenistic use of minority representatives for community consultation committees. She also notes that the community were excluded by the police from consultation about operational issues, and there was a tendency to see the establishment of a community consultative committee as the achievement rather than a beginning. Developing partnerships in restorative projects presents a major challenge for the police and community members since there is much greater expectation of shared decision-making with those partners, including community representatives. It will be difficult for community members not to defer to, or expect the police to take the lead in community committees and partnerships, and difficult for the police to give up some of their power.

A major issue is the confidentiality of information discussed above. Partnerships with other agencies and community members require sharing of information on victims, offenders and families which may breach existing laws or protocols. This requires the development of alternative protocols and guidelines to limit information sharing and create a safe environment for victims as well as offenders.

Sampson & Phillips (1998) suggest partnerships do not work well if there is a history of difficulties between partners and in areas with high levels of social and economic problems. The 'quality' of the community is an important factor. In relation to conferencing Maxwell & Morris (1996) note great variability across New Zealand and some 'notable failures' where social workers and police have blamed each other for failure to refer or release cases. Rivalry between professional organizations (eg. between police forces) can also be a factor, as can problems of who represents community and minority interests. Partnerships are likely to be more successful if they are not 'top-down' projects, but the result of more collaborative initiatives (Hughes et al., 1998). Nevertheless, the problem of who represents the community, as well as community willingness to enter partnerships will remain particularly acute. As McLaughlin (1992 p.485) has put it in relation to changes in policing in Britain:

> How is the customer/service nexus going to work in post-industrial inner cities which have been scarred by fragmentation, unemployment, poverty, discrimination, and social disinvestment? It must be recognized that these social conditions undermine the very pre-conditions for consensual community policing. How will it alter the relationship between the police and those community groups - the economically marginal, the 'dispossessed', the 'underclass' - who have historically constituted the 'object ' of policing? Surely they will remain, by definition, 'outside' this celebration of 'consumer power', in the same way that they seem destined to remain outside the edifice of citizenship.

In a detailed review of community policing and restorative justice Caroline Nicholl (1998) concludes (in part on the basis of her own policing experience in England as well as the US) that community policing is not yet well enough established, nor with sufficient leadership, to support the widespread development of good restorative justice models. She is also critical of training approaches which assume that it is sufficient to give young officers training in conferencing without considering the operating environment in which they must work. Expecting them to be able to overcome the traditional culture and environment of policing, without considerable additional leadership and support, is in her view, dangerous and neglectful. She argues that it is essential to maintain a balance between what she terms informal justice and the formal justice system, and concludes that neither restorative justice nor community policing are viable without each other, but both can benefit from each other.

Developing and Delivering Restorative Justice

Many of the benefits and limitations of restorative justice have been discussed in this report on the basis of past and recent practice. Some suggestions have been made about how those limitations can be minimized or overcome. There has never been a time when so many diverse groups were interested in its development, nor when its potential for real expansion was more apparent.

For policing it represents a major challenge and an opportunity to build upon the notion of community policing, by sharing responsibilities for social justice with community members on a more equitable basis. Yet while the police are well placed to develop restorative justice, because of their discretionary role as gatekeepers in the justice system, because of the push to expand diversion, because they are well placed to develop partnerships with the community, it may be much harder for them to do so appropriately or effectively than others. More than any other agency or community group, the police face much stronger pulls and expectations, both internally and externally, towards a retributive offender-based justice system. The need for the police to develop broad-based community partnerships, to have strong support at all levels of the service, and to establish clear principles, goals and protocols to counter these tendencies, is even greater than for other groups. They must also consider the incompatibilities of working with victims, offenders and families in the community in a social justice role, when there is increasing pressure from the public and the correctional system to focus on the risks presented by individual offenders, and the targeting of offender needs (and treatment) on the basis of their particular characteristics (McKeague, 1998).

Thus some of the central questions the police must ask in relation to their role in restorative justice include:

- how accepted/well developed is community policing
- how much support will restorative justice initiatives have both within and outside the police service
- what are the characteristics of the local community
- how extensive and on-going will training be
- how can on-going development be ensured

And for individual project survival there are three crucial conditions: a close fit between the project and the local environment; commitment at all levels from those inside and outside the project, and adequate resources to support the programme.[47]

Many advocates suggest `softer' ways of selling restorative justice such as telling stories. Umbreit (1994) argues that individual stories provide powerful testimony to its validity, and need to be heard. Others (eg. Braithwaite & Mugford, 1994; Moore, 1998) stress using different language and asking different questions, such as talking in terms of widening the net of social support rather than increasing the net of social control; of diversion to the community rather than diversion from the justice system, and of thinking in terms of social justice - not just legal justice. Stuart (1997) talks of the importance of continual communication with the community, and the need to communicate effectively, and continually - to counter bad press and the media focus on failures, to emphasise gains and successes. Powerful and persuasive as these approaches are, they do not remove the necessity for careful planning, implementation and evaluation, the need to ensure that justice is in fact being delivered in a balanced way.

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[47]. See Appendix II and Harris & Smith (1996) for further discussion on developing community projects.

There is a real danger of over-enthusiasm, of placing too many expectations upon a 'new' approach to dealing with problems, of overextending, or developing too fast. Brodeur (1994 p.78) refers to 'the present infatuation with community policing' and stresses the importance of maintaining a critical view. The obverse is that the practice of restorative justice may become routinized, after the enthusiasm wears off. In Marshall's view:

> It may be advantageous that it remains an open model able to accept innovations as they occur...it is its ability to absorb many different concerns that gives it appeal, and it is its grounding in successful practice that gives it persuasive justification. In this lies its strength and weakness.' (Marshall, 1998 p.34).

As Braithwaite & Mugford put it (1994 p.168) 'there are no criminal justice utopias to be found, just better and worse directions to head in'. Like community policing, restorative justice is not just about a set of techniques but about political and philosophical approaches.

Appendix I

The 1998 Ontario Community Justice Survey

The survey was conducted by the Operational Policy and Support Bureau of the OPP in March and April 1998. Over 200 surveys were distributed to OPP detachments, First Nations and municipal police agencies in the province. The survey asked for details of any community justice projects in each agency's area of jurisdiction, which might be used with adults or young offenders, and at pre or post-charge stages, or as part of formal cautioning programmes. Nil returns were requested. Of the surveys distributed, 127 were returned, relating to 138 agencies. Eight surveys were completed for more than one agency. Overall 53% (73) of the responses were from OPP detachments, 33% (45) from municipal agencies and 15% (20) from First Nations. A total of 31 agencies reported community justice programmes. The responses were as follows:

	Agencies with Programmes		**Agencies with No programmes**		**All agency Responses**	
OPP detachments	11	15.1%	62	84.9%	73	100.0%
Municipal agencies	14	31.1%	31	68.9%	45	100.0%
First Nations	6	30.0%	14	70.0%	20	100.0%
Total	31	22.5%	107	77.5%	138	100.0%

Overall, 56 programmes were reported: 17 agencies reported 1 programme, 7 two programmes, 6 had three programmes, and one agency reported 7.

The Operational Research Section are aware of a number of relevant programmes which were not reported, and the resulting information cannot be regarded as a complete picture of existing practice. Additional information on programmes is being compiled.

Information was sought on when programmes began; who runs them; community partners; staffing and specific training; cases targeted and criteria for selection of cases; the numbers of cases referred; programme goals; monitoring; funding sources; and whether there are written policies and procedures. In spite of the explanation of the kinds of programmes which might be included, there appeared to be considerable confusion about what constituted a community justice project. Some victim support programmes with no offender input, and diversion projects without any apparent restorative content were reported. Many of those projects reported contained little detailed information, indicating either that respondents were too busy to complete the forms or did not have the information readily available. The latter explanation is probably the more correct, suggesting that the basic monitoring of programmes may not be in place.

Of the 53 programmes identified, 16 were described as diversion and alternative measures initiatives for young offenders and six for adults. There were 7 other unspecified youth programmes, and 3 diversion programmes; a programme for high-risk young offenders, and three programmes targeting specific offences (shoplifting, traffic offences and domestic violence). Three victim support programmes with no apparent offender input were also listed.

Of those programmes clearly identifiable as restorative, circle sentencing was reported at Chippewas of Sarnia, Kettle & Stoney Point, and Petrolia; conferencing at Kettle & Stoney Point, Kenora and Pickle Lake; an Elder's Court was identified by Wunnumin Police and a Tribunal court in Kenora; victim-offender mediation programmes were reported by Niagara Regional Police and Sudbury; and a pre-mediation programme at Mount Forest. Justice committees were listed by Akwesasne Mohawk Police, and Anishinabek, Kenora and Manitoulin. Thus the majority of clearly restorative projects were associated with First Nations areas.

Among those agencies who provided complete survey information, the following were selected as the main goals of programmes:

Programme Goals	No. of programmes selecting as main goal
Offender responsibility	24
Reduce caseloads	20
Victim satisfaction	17
Offender rehabilitation	16
Community involvement	15
Prevent crime	12
Victim reparation	12
Public safety	11

Given that all programmes took place in the community, and could be seen as community programmes, few clearly identified themselves as restorative or community justice initiatives, and this seems to be reflected in the choice of programme goals. Offender responsibility and caseload reduction were the most common goals selected. While incomplete (and the difficulties of conducting postal surveys are recognized) the survey suggests there is considerable room for the development of a more definitive policy on community justice, what it entails, what it might involve, and how projects might be set up. It also illustrates the problems of using broad-based terms such as community which can be interpreted to mean many things.

Appendix II

Developing and Evaluating Community projects

Apart from the existing RCMP resource guide Community Justice Forums, and the OPP manual on community Policing How Do We Do It?, a number of recent reports and guides have been produced in Canada on setting up community partnership programmes utilizing restorative justice principles, as well as developing evaluation. No single guide to evaluation is provided here, given the range of projects and communities discussed, but some broad guidelines are included, together with some useful lists.

The basic steps required in establishing restorative justice programmes can be summarized in the following table:

1. Establish principles	Review needs, strengths of community
2. Set goals and objectives	Develop community links, committees
3. Develop strategy & organization	Identify specific needs, approaches & links
4. Develop funding and training	Set up monitoring
5. Implementation	Evaluate process & implementation
6. Maintenance & reinforcement	Revise funding & additional training
7. Change & adaptation where necessary	Evaluate process in light of goals
8. Continued implementation	Assess impact in light of goals & objectives

Stuart (1996) lists nine principles for maintaining community initiatives.

1 The importance of pre-implementation planning.
2 Community ownership.
3 Sensitivity to community circumstances.
4 Widespread community understanding and support - requiring active communication.
5 Government support at all levels - an advisory council and police especially important.
6 The importance of volunteers - and the need to support, train and fund sufficiently.
7 Focus on objectives, setting clear goals.
8 Evaluation - the need to examine the process, look at secondary effects, long-term changes - and to have long-term funding.
9 Maintain essential justice principles and practices.

Stuart's guide Building Community Justice Partnerships (1997) also provides many practical ideas eg. on recruiting volunteers, training professionals, galvanizing individual and community involvement, running public meetings etc.

Susan Sharpe's (1998) guide Restorative Justice : A Vision for Healing & Change provides good concrete guidelines for designing and developing programmes in terms of structure, case management, staffing, professional development, programme performance and public relations.

Clairmont & Linden's guide Making in Work: Planning and Evaluating Community & Healing Corrections Projects in Aboriginal Communities (1998) provides some excellent practical information on setting up, monitoring and evaluating projects (including evaluation questions) which is relevant to non-aboriginal settings too. They stress the importance of examining questions of fairness, justice, satisfaction, support, safety, completion etc. for each of the key components of a restorative approach: victims, offenders and community members, and the extent and representativeness of community participation.

In relation to conferencing, Braithwaite & Mugford (1994) outline 14 conditions for successful re-integrative ceremonies (adapted from Table 1 p. 143) which provide a useful basis for developing an understanding of the processes involved in this particular approach.

1. The event, not the perpetrator, is the focus.
2. The event and the perpetrator must be `uncoupled': stresses wrongfulness of the act, but the perpetrator as essentially a good person.
3. Coordinator must identify with all the private parties as well as public interest in upholding the law.
4. Denunciation by victims and in name of broader society too.
5. Non-authoritative actors must be empowered, and power of public authorities `de-centred'.
6. Offender must show they uphold values of community and victim.
7. Distance between participants must be closed.
8. Separation of denounced person must be terminated by rituals of inclusion.
9. Reintegration also brings in victim who may have been separated by fear or shame.
10. Must prevent power imbalances in both the shaming and reintegration stages.
11. Ceremony design must be flexible and culturally plural.
12. Must follow through to ensure enactment of agreements.
13. If reintegration ceremony fails must repeat again and again until successful.
14. Ceremony must be justified by a politically resonant discourse.

Glossary

Alternative Justice - a general term referring to dispute resolution using mediation and conciliation techniques rather than accusatory and guilt finding processes. Alternative Dispute Resolution (ADR) uses such techniques in workplace and non-criminal justice situations.

Circle Sentencing - a process where community members including victim, offender and their supporters, contribute to sentence decision-making with justice personnel, and make recommendations to the judge. Developed in Aboriginal communities in Canada. Key issue: the process used to select a sentence is more important than the sentence itself. Also linked to Community Circles, Talking circles, Healing circles, Peacemaking Circles.

Community and Neighbourhood Justice Centres - a variety of community-based initiatives including mediation boards and panels dealing with criminal and sometimes civil cases, or providing programmes post-charge or sentence.

Community Justice - another term for restorative justice, but broader in scope and often used to included community justice committees and other initiatives designed to increase community input into justice. Bazemore & Griffiths (1997) however, suggest the term may be too broad to reflect restorative principles. Community input may not necessarily be restorative in its approach. The term has also been used to encompass community policing, community development projects, and community-based probation and youth justice programmes.

Community Justice Committees - committees including justice personnel, other agencies and representatives of local community set up to consider needs, strategies etc. in relation to local justice.

Community Justice Forums - preferred term for conferencing used by RCMP.

Communitarian Justice - a model of justice and preferred term used (eg. in Australia) for restorative justice. Emphasizing restoration of offender to community, and the community basis.

Elder Panels - a panel of Aboriginal Elders who as respected members of their community provide advice and wisdom on a range of local community justice issues eg. they may sit in at court hearings and provide advice on sentencing, based on their knowledge of the families involved (Ross, 1992).

Family Group Conferencing - initially developed and used for young offender and child welfare cases, pre or post- charge, bringing together victims, offenders, their families and supporters with agency and justice personal to discuss the event and its consequences, and reach an agreed contract on what can be done to make amends. Other terms now used include Community Accountability Forums, Community Justice Forums, Offender Accountability Conferencing. Terminology used may indicate differences in primary objectives especially in relation to victims.

Healing Circles - eg. Hollow Water Community Holistic Healing Circle. Used for community conflict and healing of sex abuse issues. Culturally appropriate and coordinated intervention aims to `restore balance by empowering individuals, families, and the community to deal productively in healing way with problems of sexual abuse'.

Informal Justice - another term for restorative justice emphasising the liberation from formal guidelines or professional control.

Mediation - `the intervention of a third party to help two or more....' using conciliation techniques.

Peacemaking - term used by advocates of alternative crime-control strategies, especially those found in traditional societies.

Popular Justice - term often used to refer to compensatory and conciliatory approaches in non-Western cultures.

Reconciliation - bringing together and reconciling differences between offender and victim, or families, community.

Reintegrative Shaming - term developed by Braithwaite (1990) to refer the processes used in conferencing of shaming the offender and reintegrating them back into the community. Sees conscience as a much more powerful weapon to control behaviour than punishment.

Reparation- making up in some material way for harm done, may include goods & services as well as money. Reparative Probation Boards have been established in Vermont and include community and victim input.

Restitution - usually refers to financial payment in compensation for harm done.

Restorative Justice - the most widely used term to describe a range of primary objectives for criminal justice (and non-criminal) which is non-adversarial and brings citizens into closer contact with justice decision-making. Core beliefs include involving all participants in justice process, victims, offenders and others in their community affected by the event; desire to re-establish peace; holding offenders accountable for their actions; focus on putting right the wrong, and on the future rather than the past. Other terms which have been used include the New Justice, Relational Justice, Positive Justice.

Retributive Justice - the traditional justice approach which focuses primarily on establishing blame and guilt, and apportioning punishment, and conducted by the formal justice system and personnel. Is seen to exclude victims and the wider community.

Transformative Justice - term used by eg. Ruth Morris (1994) as preferable to restorative justice because it does not imply an existing relationship between the offender and the community, and reinforces the notion of transcending old ways with new healing relationships and approaches.

Victim-Offender Reconciliation Programmes (VORP) - also referred at as victim-offender mediation programmes. Developed from 1970's to bring together victim and offender with a skilled mediator to deal with emotional and practical implications of offence.

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